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Legislative History – Montana Session Law

Chapter: 284 Session L: 1997
Bill Number: SB 375

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☒
Final Version of Bill	☒

House

Committee: Business and Labor

Hearing Date(s): 03/24/1997

Committee Report: Bill concurred as amended

Senate

Committee: Labor and Employment Relations

Hearing Date(s): 02/20/1997

Committee Report: Bill passed as amended

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: Charlotty Herman
Date: 07/23/2026
Notes: No Conference Committee; no Senate exhibits

Bill No.	Chapter No.
SB 368	354
SB 369	333
SB 370	153
SB 372	414
SB 374	552
SB 375	284
SB 377	415
SB 378	416
SB 379	374
SB 381	504
SB 382	468
SB 383	285
SB 386	466
SB 390	505
SB 394	355
SB 396	506

4/18	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	25	21
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	26	23
4/21	FREE CONFERENCE COMMITTEE DISSOLVED		
4/21	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/22	ON MOTION RULES SUSPENDED TO PLACE ON 2ND READING THIS DAY		
4/22	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	34	14
4/23	HEARING		
4/23	RECONSIDERED PREVIOUS ACTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 2 ON 2ND READING	48	0
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 3		
4/23	ON MOTION RULES SUSPENDED TO PLACE FREE CONFERENCE COMMITTEE REPORT NO. 3 ON 2ND READING THIS DAY		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	34	14
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	33	17
	HOUSE		
4/18	FREE CONFERENCE COMMITTEE APPOINTED		
4/18	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/21	MOTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 1 ON 2ND READING FAILED	35	65
4/21	FREE CONFERENCE COMMITTEE DISSOLVED		
4/21	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/22	MOTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 2 ON 2ND READING FAILED	35	65
4/23	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 2ND READING	59	40
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 3		
4/23	MOTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 3 ON 2ND READING FAILED	49	51
4/23	RECONSIDERED PREVIOUS ACTION	57	43
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	57	43
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	56	43
4/30	SIGNED BY SPEAKER		
5/02	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 552		
	EFFECTIVE DATE: 07/01/97—SECTIONS 11, 12 & 14-104		
	EFFECTIVE DATE: 10/01/97—SECTIONS 1, 9, 10 & 13		
	EFFECTIVE DATE: 10/01/98—SECTIONS 2-8		

SB 375 INTRODUCED BY THOMAS *LC0526 DRAFTER: MCCLURE*

REVISE THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND

2/17	INTRODUCED
2/17	REFERRED TO LABOR & EMPLOYMENT RELATIONS
2/17	FIRST READING
2/17	FISCAL NOTE REQUESTED

2/20	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	50	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/14	FISCAL NOTE RECEIVED		
	AMENDED		
3/14	FISCAL NOTE PRINTED		
3/24	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	96	2
4/04	3RD READING CONCURRED	97	2
	RETURNED TO SENATE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	50	0
4/09	3RD READING CONCURRED AS AMENDED	50	0
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 284		
	EFFECTIVE DATE: 04/16/97—SECTIONS 6, 8 & 9		
	EFFECTIVE DATE: 01/01/98—SECTIONS 1-5 & 7		

SB 376 INTRODUCED BY HERTEL, ET AL. *LC1395 DRAFTER: CAMPBELL*

TRANSFER THE LICENSING OF DEALERS OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES AND THE REGULATION OF SALES AND DISTRIBUTION OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES TO THE DEPARTMENT OF JUSTICE

BY REQUEST OF SENATE BUSINESS & INDUSTRY COMMITTEE

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO BUSINESS & INDUSTRY		
2/17	FISCAL NOTE REQUESTED		
2/20	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
2/24	COMMITTEE REPORT—BILL NOT PASSED		
2/25	ADVERSE COMMITTEE REPORT ADOPTED	49	1

SB 377 INTRODUCED BY GROSFIELD, ET AL. *LC0759 DRAFTER: MITCHELL*

REVISE THE LAWS RELATING TO THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO NATURAL RESOURCES		
2/17	FISCAL NOTE REQUESTED		
2/21	HEARING		
2/22	FISCAL NOTE RECEIVED		
2/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	FISCAL NOTE PRINTED		
2/25	2ND READING PASSED	47	3
2/26	3RD READING PASSED	46	3

Senate BILL NO. 375

INTRODUCED BY Thomas

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, 39-71-906, 39-71-907, 39-71-908, AND 39-71-909, MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Assessment of insurers -- definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 employer, and plan No. 3, the state fund, a proportion of the amount expended from the fund during each calendar year. The total assessment amount must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses from the fund for the calendar year preceding the year in which the assessment is collected.

(3) The portion of the total aggregate assessment that must be collected from all plan No. 1 employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid from the fund in the calendar year preceding the year in which the assessment is collected.

(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, is as follows:

(a) on plan No. 1 employers, based on paid losses;

(b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and

(c) on plan No. 3, the state fund, based on paid losses.

(5) On or before February 1 each year, the department shall notify each plan No. 1 employer and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before February 1 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify insurers of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

(6) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. I employers during the preceding calendar year.

(7) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 employer bore to that the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any anticipated deficiency based upon the allocation for that calendar year determined under subsection (3). Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund, shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.

(9) Except for payment of the emergency assessment, payment of assessments due must be made to the department semiannually on March 1 and September 1 of the year following the calendar year in which the assessment is based.

(10) Each plan No. 2 insurer providing workers' compensation insurance shall collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium. The assessments must include any amounts paid by plan No. 2 insurers on behalf of their

policyholders to cover an emergency assessment by the department during the previous calendar year. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(11) All assessments paid to the department must be deposited in the fund. Any balance remaining at the end of any fiscal year does not revert to the general fund. The costs of administration of the fund must be paid out of money in the fund.

Section 2. Section 33-16-1008, MCA, is amended to read:

"**33-16-1008. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of

losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based and excluding any separately stated policyholder surcharges, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner."

Section 3. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund -- option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

~~(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

~~(4)~~(3) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)."

Section 4. Section 39-71-903, MCA, is amended to read:

"**39-71-903. Procedure and practice.** When a vocationally handicapped person receives ~~a personal~~ an injury, as defined in 39-71-119, the procedure ~~and practice~~ provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided ~~herein~~."

Section 5. Section 39-71-906, MCA, is amended to read:

"**39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with department -- effect of failure to file -- department to notify insurer.** (1) ~~Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the~~ The employer shall submit to the department, on forms furnished by the department, all pertinent information requested by the department:

(a) within 60 days after the filing of an application by an employee for certification as vocationally handicapped or 60 days after the first day of the vocationally handicapped person's employment or retention in employment; and

(b) before an injury for which benefits are payable under this part.

(2) The department shall acknowledge receipt of the information. Failure to file the required information with the department within ~~60 days after the first day of the vocationally handicapped person's employment or retention in employment~~ the time required under subsection (1) precludes the employer from the protection and benefits of this part ~~unless the information is filed before an injury for which benefits are payable under this part~~."

Section 6. Section 39-71-907, MCA, is amended to read:

"**39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation.** (1) A person certified as vocationally handicapped who receives ~~a personal~~ an injury ~~arising out of and in the course of employment and resulting~~, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for

payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 7. Section 39-71-908, MCA, is amended to read:

"**39-71-908. Notification of fund of its potential liability under part -- review by fund.** Not less than ~~90 or more than 150~~ 60 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. ~~The fund thereafter~~ After notification, the fund may review, at reasonable times, ~~such~~ the information ~~as~~ the insurer has regarding the ~~accident and the nature and extent of the~~ injury and disability."

Section 8. Section 39-71-909, MCA, is amended to read:

"**39-71-909. ~~Effect of fund's failure to give notification of its intent to dispute liability -- subsequent notification by fund authorized~~ Insurer to pay benefits -- reimbursement by fund.** ~~If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial benefits, the~~ The insurer shall continue to make payments on behalf of the fund and ~~shall~~ must be reimbursed by the fund for all benefits paid in excess of the insurer's liability. ~~However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined.~~"

NEW SECTION. **Section 9. Transfer and credit of excess funds held in subsequent injury fund.** (1) On or before December 31, 1997, the department of labor and industry shall retain an independent actuary to calculate fully developed case reserves for those claims that are the liability of the fund.

(2) Claims that are identified and that are being reimbursed from the fund on or before July 1, 1997, must be paid from the reserves.

(3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in

the fund.

(4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3) in the fund, if any, must be transferred to the administration fund in 39-71-201 and credited to insurers as follows:

(a) A proportionate share of the remaining funds to be credited must be allocated among plan No. 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for the preceding 5 years bear to the total assessment in the preceding 5 years.

(b) The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No. 1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation. The credit must be allocated among insurers proportionately based on the prorated share that the amount the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund in 39-71-201.

(c) The shares allocated to plan No. 3, the state fund, must be credited to the state fund's assessment for the administration fund in 39-71-201.

NEW SECTION. **Section 10. Repealer.** Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are repealed.

NEW SECTION. **Section 11. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 1].

NEW SECTION. **Section 12. Effective dates.** (1) [Sections 1 through 8 and 10] are effective January 1, 1998.

(2) [Sections 9 and 11 and this section] are effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0375, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act revising the assessment procedures for the Workers' Compensation subsequent injury fund; providing for a runoff of claims currently administered by the subsequent injury fund; and providing for transfer and distribution of funds held in the subsequent injury fund.

ASSUMPTIONS:
General
1. The Subsequent Injury Fund (SIF) must be maintained by assessment against the Plan 1, Plan 2, and Plan 3 members.
2. The total assessment amount to be allocated among Plan 1, Plan 2, and Plan 3 members is equal to the individual member's portion of total paid losses plus a proportionate share of administrative expenses incurred by the SIF.
3. Current claims will continue to be paid from the SIF.
4. The $1,000 death benefit provided under current law in 39-71-902, MCA, will be repealed.
5. This legislation would change the annual assessment for the SIF from the current methodology of up to 5% of compensation paid by the insurer in the previous fiscal year to a methodology assessing self insurers and the State Fund based on the previous calendar year paid losses, and assessing insurance companies based on a surtax applied to premium they collected in the previous calendar year.

State Fund
6. An actuarial valuation as of July 1, 1997, will show unpaid liabilities on known claims to total $1,397,112.
7. Currently, 24 of the 93 open SIF claims (25.8%) are attributable to the State Fund.
8. Historic SIF payments on State Fund claims have been as follows: fiscal 1995 - $0; fiscal 1996 - $7,765.
9. State Fund assessments have been as follows: fiscal 1995 - $259,116; fiscal 1996 - $459,795; fiscal 1997 - $395,185 (65% of total assessment for fiscal 1997).
10. An actuarial report as of June 30, 1996, indicates SIF assessment under current law should be 0.25% of paid member benefits. Currently, the assessment rate is 0.7037%.
11. Under current law, at 0.25% of paid benefits, projected State Fund assessment would be: fiscal 1998 - $196,421; fiscal 1999 - $191,375.
12. Under proposed law, SIF-paid State Fund claims are projected to be: fiscal 1998 - $10,000; fiscal 1999 - $12,500.
13. The effect of emergency funding described in Section 1, paragraphs (8) and (9) of the proposed law cannot be determined.
14. SIF assets not needed for full-funding of known claims plus one year's funding of new claims filed on or after July 1, 1997, as actuarially determined, will be distributed back to SIF members based on percent of contribution.
15. Estimated assets available for crediting to administrative assessment fund in 39-71-201, MCA, for SIF members at June 30, 1997, after 1 year's funding of new claims and reserve for known claims are:

	FY 97
Estimated SIF assets at June 30, 1997	$5,029,093
Estimated reserve at June 30, 1997 for known claims	$1,397,112
1 year's estimated payments on new claims reported on/after July 1, 1997	$85,000
Cost of actuarial review and Administrative assessment	$49,500
Assets available for distribution	$3,497,481

16. State Fund portion of distribution, based on five year contribution rate (67.7%), would be about $2,367,794.
17. Over the 6 year period (fiscal 1991 through fiscal 1996), the State Fund has paid SIF assessments totaling $2,127,208 while recoveries under SIF benefits have totaled $376,466. Under current law, State Fund has had a net expenditure of $1,750,742 through fiscal 1996.

(Continued)

Dave Lewis 2-20-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Thom 2-20-97
FRED THOMAS, PRIMARY SPONSOR DATE

Department of Labor and Industry

18. A one-time-only actuarial analysis in fiscal 1998 would be required to identify the liability of claims filed prior to July 1, 1997, and one year anticipated reserves. The cost of an actuarial study is currently included in the agency base budget; however, the study required by this legislation involves a more complex analysis which is anticipated to increase the cost by an additional $5,000 in fiscal 1998.
19. The actuarial analysis would also identify any amount in excess of what is needed to fund claim liability. The excess amount, if any, would be transferred to the administrative assessment account provided for in 39-71-201, to reduce the amount due in the fiscal 1999 administrative assessment from Plans 1, 2, and 3. The credit would be based on aggregate contributions by the three plans in the preceding 5 years. The relative share to self-insured employers would be credited against the amount due to those authorized to self-insure at the time credit is identified. The relative share to insurance companies would be credited against the amount due from those authorized to transact insurance in the state at the time the credit is identified. The relative share to plan three would be credited to the amount due from the State Fund.
20. Crediting the unobligated balance in SIF to the Workers' Compensation administrative fund would occur only in fiscal year 1999.
21. This legislation separates the billing mechanism for the SIF assessment from the administrative assessment by establishing a different time table for assessment and collection. The new billing schedule proposed in this legislation would require a separate mailing activity, at an annual new cost of $500, starting in fiscal 1999.
22. Other workload changes created by the new procedures in this legislation would be absorbed by the current staff.
23. Eliminating the $1,000 per individual industrial death assessment (page 5, lines 25-27) will require SIF to include this historic offset in its new assessment base. In fiscal 1996 the assessment revenue to SIF through this portion of statute was $17,000.
24. Administrative costs of SIF would be included in the allocation of costs to the plans and would continue to be funded by SIF assessment.

FISCAL IMPACT:

	FY98 Difference	FY99 Difference
State Fund		
Expenditures:		
Enterprise Fund (06)	($2,470,573)	($99,825)
Funding:		
Enterprise Fund (06)	(2,470,573)	(99,825)
Department of Labor and Industry		
Expenditures:		
Operating Costs	$5,000	$500
Funding:		
SIF (06)	$5,000	$500

Net Impact:
State Fund
1. Proposed law will reduce State Fund expenditures by $2.5 million over the biennium.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
State Fund
1. Reduced expenditures may decrease pressure on rates charged to State Fund customers.
Department of Labor and Industry
2. The ability to invest in STIP and collect interest earnings in the fund is repealed by this legislation. Interest earnings for SIF in fiscal 1996 were $117,918.

TECHNICAL NOTES:
Department of Labor and Industry
The reporting of benefits for the fourth quarter of a calendar year is not complete until March of any given year, which makes an assessment in February impractical.

APPROVED BY COM ON LABOR
& EMPLOYMENT RELATIONS

SENATE BILL NO. 375

INTRODUCED BY THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, ~~39-71-906,~~ AND 39-71-907, ~~39-71-908, AND 39-71-909,~~ MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Assessment of insurers -- definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) EXCEPT FOR MEDICAL BENEFITS IN EXCESS OF $200,000 PER OCCURRENCE THAT ARE EXEMPT FROM ASSESSMENT, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 INSURED employer, and plan No. 3, the state fund, a proportion of the amount expended from the fund during each calendar year. THE TOTAL AMOUNT OF FUNDS RETAINED IN THE FUND PLUS THE ASSESSMENT MAY NOT EXCEED TWICE THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE PRECEDING CALENDAR YEAR. The total assessment amount COLLECTED must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses REIMBURSED from the fund for the calendar year preceding the year in which the assessment is collected.

(3) The portion of the total aggregate assessment that must be collected from all plan No. 1 employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid

SECOND READING

from the fund in the calendar year preceding the year in which the assessment is collected.

~~(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, is as follows:~~

~~(a) on plan No. 1 employers, based on paid losses;~~

~~(b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and~~

~~(c) on plan No. 3, the state fund, based on paid losses.~~

~~(5)~~(4) On or before ~~February 1~~ MARCH 31 each year, the department shall notify each plan No. 1 employer, PLAN NO. 2 INSURER, and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before ~~February 1~~ MARCH 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify PLAN NO. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

~~(6)~~(5) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. I employers during the preceding calendar year.

~~(7)~~(6) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 INSURED employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 INSURED employer bore to ~~that~~ the total paid losses of all plan No. 2 insurers during the preceding calendar year.

~~(8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any anticipated deficiency based upon the allocation for that calendar year determined under subsection (3). Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund, shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.~~

~~(9)~~(7) ~~Except for payment of the emergency assessment, payment~~ PAYMENT of assessments due must be made to the department semiannually on ~~March 1~~ JUNE 30 and ~~September 1~~ DECEMBER 31 of

the year following the calendar year in which the assessment is based.

~~(10)~~(8) Each plan No. 2 insurer providing workers' compensation insurance ~~shall~~ MAY collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium. ~~The assessments must include any amounts paid by plan No. 2 insurers on behalf of their policyholders to cover an emergency assessment by the department during the previous calendar year.~~ When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(11)~~(9) All assessments paid to the department must be deposited in the fund. Any balance remaining at the end of any fiscal year does not revert to the general fund. The costs of administration of the fund must be paid out of money in the fund.

Section 2. Section 33-16-1008, MCA, is amended to read:

"**33-16-1008. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership

or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based and excluding any separately stated policyholder surcharges, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of

exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner."

Section 3. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund -- option for agreement between department and injured employee. The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

~~(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers'~~

~~fund rather than the subsequent injury fund.~~

~~(4)~~(3) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)."

Section 4. Section 39-71-903, MCA, is amended to read:

"**39-71-903. Procedure and practice.** When a vocationally handicapped person receives ~~a personal~~ an injury, as defined in 39-71-119, the procedure ~~and practice~~ provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided ~~herein~~."

~~**Section 5.** Section 39-71-906, MCA, is amended to read:~~

~~"**39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with department -- effect of failure to file -- department to notify insurer.** (1) Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the The employer shall submit to the department, on forms furnished by the department, all pertinent information requested by the department:~~

~~(a) within 60 days after the filing of an application by an employee for certification as vocationally handicapped or 60 days after the first day of the vocationally handicapped person's employment or retention in employment; and~~

~~(b) before an injury for which benefits are payable under this part.~~

~~(2) The department shall acknowledge receipt of the information. Failure to file the required information with the department within 60 days after the first day of the vocationally handicapped person's employment or retention in employment the time required under subsection (1) precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part."~~

Section 5. Section 39-71-907, MCA, is amended to read:

"**39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation.** (1) A person certified as vocationally handicapped who receives ~~a personal~~ an injury ~~arising out of and in the course of employment and~~

~~resulting~~, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

~~**Section 7.** Section 39-71-908, MCA, is amended to read:~~

~~**"39-71-908. Notification of fund of its potential liability under part -- review by fund.** Not less than 90 or more than 150 60 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter After notification, the fund may review, at reasonable times, such the information as the insurer has regarding the accident and the nature and extent of the injury and disability."~~

~~**Section 8.** Section 39-71-909, MCA, is amended to read:~~

~~**"39-71-909. Effect of fund's failure to give notification of its intent to dispute liability -- subsequent notification by fund authorized Insurer to pay benefits -- reimbursement by fund.** If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial benefits, the The insurer shall continue to make payments on behalf of the fund and shall must be reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined."~~

NEW SECTION. **Section 6. Transfer and credit of excess funds held in subsequent injury fund.** ~~(1) On or before December 31, 1997, the department of labor and industry shall retain an independent~~

~~actuary to calculate fully developed case reserves for those claims that are the liability of the fund.~~

~~(2) Claims that are identified and that are being reimbursed from the fund on or before July 1, 1997, must be paid from the reserves.~~

~~(3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in the fund.~~

~~(4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3) in the fund, if any, must be transferred to the administration~~ ON OR BEFORE SEPTEMBER 1, 1997, THE DEPARTMENT OF LABOR AND INDUSTRY SHALL TRANSFER $3.5 MILLION OF THE FUNDS RETAINED IN THE FUND TO THE fund in 39-71-201 and ~~credited~~ CREDIT THE AMOUNT to insurers as follows:

~~(a)~~(1) A proportionate share of the remaining funds to be credited must be allocated among plan No. 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for the preceding 5 years bear to the total assessment in the preceding 5 years.

~~(b)~~(2) The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No. 1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation. The credit must be allocated among insurers proportionately based on the prorated share that the amount the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund in 39-71-201.

~~(c)~~(3) The shares allocated to plan No. 3, the state fund, must be credited to the state fund's assessment for the administration fund in 39-71-201.

NEW SECTION. **Section 7. Repealer.** Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are repealed.

NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 1].

NEW SECTION. **Section 9. Effective dates.** (1) [Sections 1 through ~~8~~ 5 and ~~10~~ 7] are effective January 1, 1998.

(2) [Sections ~~9~~ 6 and ~~11~~ 8 and this section] are effective on passage and approval.

-END-

SENATE BILL NO. 375

INTRODUCED BY THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, ~~39-71-906,~~ AND 39-71-907, ~~39-71-908, AND 39-71-909,~~ MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

THIRD READING

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0375, third reading

DESCRIPTION OF PROPOSED LEGISLATION:
An act revising the assessment procedures for the Workers' Compensation subsequent injury fund; providing for a runoff of claims currently administered by the subsequent injury fund; and providing for transfer and distribution of funds held in the subsequent injury fund.

ASSUMPTIONS:
General:
1. The subsequent injury fund (SIF) must be maintained by assessment against the Plan 1, Plan 2, and Plan 3 members.
2. The total assessment amount to be allocated among Plan 1, Plan 2, and Plan 3 members is equal to the individual member's portion of total paid losses plus a proportionate share of administrative expenses incurred by the SIF.
3. Current claims will continue to be paid from the SIF.
4. The $1,000 death benefit provided under current law in 39-71-902, MCA, will be repealed.
5. This legislation would change the annual assessment for the SIF from the current methodology of up to 5% of compensation paid by the insurer in the previous fiscal year to a methodology assessing self insurers, private carriers and the state fund based on the previous calendar year paid losses.

State Fund:
6. An actuarial valuation as of July 1, 1997, will show unpaid liabilities on known claims to total $1,397,112.
7. Currently, 24 of the 93 open SIF claims (25.8%) are attributable to the State Fund.
8. Historic SIF payments on State Fund claims have been as follows: fiscal 1995 - $0; fiscal 1996 - $7,765.
9. State Fund assessments have been as follows: fiscal 1995 - $259,156; fiscal 1996 - $459,795; fiscal 1997 - $395,185 (65% of total assessment for fiscal 1997).
10. An actuarial report as of June 30, 1996, indicates SIF assessment under current law should be 0.25% of paid member benefits. Currently, the assessment rate is 0.7037%.
11. Under current law, at 0.25% of paid benefits, projected State Fund assessment would be: fiscal 1998 - $196,421; fiscal 1999 - $191,375.
12. Under proposed law, SIF-paid State Fund claims are projected to be: fiscal 1998 - $10,000; fiscal 1999 - $12,500.
13. SIF assets not needed for full-funding of known claims plus one year's funding of new claims filed on or after July 1, 1997, as actuarially determined, will be distributed back to SIF members based on percent of contribution.
14. Estimated assets available for crediting to administrative assessment fund in 39-71-201, MCA, for SIF members at June 30, 1997, after 1 year's funding of new claims and reserve for known claims are:

	FY 97
Estimated SIF assets at June 30, 1997	$5,029,093
Estimated reserve at June 30, 1997 for known claims	$1,397,112
1 year's estimated payments on new claims reported on/after July 1, 1997	$85,000
Cost of actuarial review and Administrative assessment	$49,500
Assets available for distribution	$3,497,481

15. The State Fund portion of distribution, based on five year contribution rate (67.7%), would be about $2,367,794.
16. Over the 6 year period (fiscal 1991 through fiscal 1996), the State Fund has paid SIF assessments totaling $2,127,208 while recoveries under SIF benefits have totaled $376,466. Under current law, State Fund has had a net expenditure of $1,750,742 through fiscal 1996.

(Continued)

Dave Lewis 3-14-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Thomas 3-14-97
FRED THOMAS, PRIMARY SPONSOR DATE

Department of Labor and Industry:

17. On or before September 1, 1997, the Department of Labor and Industry shall transfer $3.5 million from the fund to the administrative assessment account provided for in 39-71-201, to reduce the amount due in the FY98 administrative assessment from Plans 1, 2, and 3. The credit would be based on aggregate contributions by the three plans in the preceding 5 years. The relative share to self-insured employers would be credited against the amount due to those authorized to self-insured at the time credit is identified. The relative share to insurance companies would be credited against the amount due from those authorized to transact insurance in the state at the time the credit is identified. The relative share to plan 3 would be credited to the amount due from the State Fund.
18. This legislation separates the billing mechanism for the SIF assessment from the administrative assessment by establishing a different time table for assessment and collection. The new billing schedule proposed in this legislation would require a separate mailing activity, at an annual new cost of $500, starting in FY99.
19. Other workload changes created by the new procedures in this legislation would be absorbed by the current staff.
20. Eliminating the $1,000 per individual industrial death assessment (page 5, lines 25-27) will require SIF to include this historic offset in its new assessment base. In FY96 the assessment revenue to SIF through this portion of statute was $17,000.
21. Administrative costs of SIF would be included in the allocation of costs to the plans and would continue to be funded by SIF assessment.

FISCAL IMPACT:

	FY98	FY99
State Fund:	Difference	Difference
Expenditures:		
Enterprise Fund (06)	(2,470,573)	(99,825)
Funding:		
Enterprise Fund (06)	(2,470,573)	(99,825)
Department of Labor and Industry:		
Expenditures:		
Operating Costs		500
Funding:		
SIF (06041)	0	500
SIF (06040)	(3,500,000)	0
WC Assessment (02455)	3,500,000	0
Total	0	500

Net Impact:
State Fund
1. Proposed law will reduce State Fund expenditures by $2.5 million over the biennium.
2. Assessments to insurers will be reduced based on $3.5 million credited in the workers' compensation administration fund.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
State Fund
1. Reduced expenditures may decrease pressure on rates charged to State Fund customers.

Department of Labor and Industry
2. The ability to invest in STIP and collect interest earnings in the fund is repealed by this legislation. Interest earnings for SIF in fiscal 1996 were $117,918.

TECHNICAL NOTES:
Department of Labor and Industry
1. In new Section 1 (p.2 line 9), for clarification insert ",insurer," after "...the employer..." to make it consistent with line 8 new language change, and strike "...or..." and replace with "...and..." before "...the state fund...."
2. Senate Bill 290 includes scheduling cycles for reporting of paid losses on March 31 of each year by Plan 1 self-insurers, Plan 2 private carriers, and the State Fund. SB 375 requires that the department notify the three plans by March 31 of the amount of their respective SIF assessment. To determine the amount of the SIF assessment, the paid loss figures discussed above would be needed for administrative purposes by February 28 in order to determine the SIF assessment. These reporting schedules between the two bills need to be reconciled.

SENATE BILL NO. 375

INTRODUCED BY THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, ~~39-71-906,~~ AND 39-71-907, ~~39-71-908, AND 39-71-909,~~ MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Assessment of insurers -- definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) EXCEPT FOR MEDICAL BENEFITS IN EXCESS OF $200,000 PER OCCURRENCE THAT ARE EXEMPT FROM ASSESSMENT, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 INSURED employer, and plan No. 3, the state fund~~, a proportion of the amount expended from the fund during each calendar year. THE TOTAL AMOUNT OF FUNDS RETAINED IN THE FUND PLUS THE ASSESSMENT MAY NOT EXCEED TWICE THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE PRECEDING CALENDAR YEAR. The total assessment amount COLLECTED must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses REIMBURSED from the fund for the calendar year preceding the year in which the assessment is collected.~~

~~(3) The portion of the total aggregate assessment that must be collected from all plan No. 1 employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid~~

~~from the fund in the calendar year preceding the year in which the assessment is collected~~. THE ASSESSMENT AMOUNT IS THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE PRECEDING CALENDAR YEAR AND THE EXPENSES OF ADMINISTRATION LESS OTHER INCOME. THE TOTAL ASSESSMENT AMOUNT COLLECTED MUST BE ALLOCATED AMONG PLAN NO. 1 EMPLOYERS, PLAN NO. 2 INSURED EMPLOYERS, AND PLAN NO. 3, THE STATE FUND, BASED ON PAID LOSSES FOR THE CALENDAR YEAR PRECEDING THE YEAR IN WHICH THE ASSESSMENT IS COLLECTED. THE BOARD OF INVESTMENTS SHALL INVEST THE MONEY OF THE FUND, AND THE INVESTMENT INCOME MUST BE DEPOSITED IN THE FUND.

~~(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, is as follows:~~

~~(a) on plan No. 1 employers, based on paid losses;~~

~~(b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and~~

~~(c) on plan No. 3, the state fund, based on paid losses.~~

~~(5)~~(4)(3) On or before ~~February 1~~ MARCH 31 each year, the department shall notify each plan No. 1 employer, PLAN NO. 2 INSURER, and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before ~~February 1~~ MARCH 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify PLAN NO. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

~~(6)~~(5)(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. I employers during the preceding calendar year.

~~(7)~~(6)(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 INSURED employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 INSURED employer bore to ~~that~~ the total paid losses of all plan No. 2 insurers during the preceding calendar year.

~~(8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to~~

~~generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any anticipated deficiency based upon the allocation for that calendar year determined under subsection (3). Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund, shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.~~

~~(9)~~(7)~~(6) Except for payment of the emergency assessment, payment~~ PAYMENT of assessments due must be made to the department semiannually on ~~March 1~~ JUNE 30 and ~~September 1~~ DECEMBER 31 of the year following the calendar year ~~in~~ ON which the assessment is based.

~~(10)~~(8)(7) Each plan No. 2 insurer providing workers' compensation insurance ~~shall~~ MAY collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium. ~~The assessments must include any amounts paid by plan No. 2 insurers on behalf of their policyholders to cover an emergency assessment by the department during the previous calendar year.~~ When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(11)~~(9)(8) All assessments paid to the department must be deposited in the fund. ~~Any balance remaining at the end of any fiscal year does not revert to the general fund. The costs of administration of the fund must be paid out of money in the fund.~~

Section 2. Section 33-16-1008, MCA, is amended to read:

"**33-16-1008. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'

compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based and excluding any separately stated policyholder surcharges, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner."

Section 3. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund -- option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers

in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

~~(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

~~(4)~~(3) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)."

Section 4. Section 39-71-903, MCA, is amended to read:

"**39-71-903. Procedure and practice.** When a vocationally handicapped person receives ~~a personal~~ an injury, as defined in 39-71-119, the procedure ~~and practice~~ provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided ~~herein~~."

~~**Section 5.** Section 39-71-906, MCA, is amended to read:~~

~~"**39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with department -- effect of failure to file -- department to notify insurer.** (1) Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the The employer shall submit to the department, on forms furnished by the department, all pertinent information requested by the department:~~

~~(a) within 60 days after the filing of an application by an employee for certification as vocationally handicapped or 60 days after the first day of the vocationally handicapped person's employment or retention in employment; and~~

~~(b) before an injury for which benefits are payable under this part.~~

~~(2) The department shall acknowledge receipt of the information. Failure to file the required information with the department within 60 days after the first day of the vocationally handicapped person's~~

~~employment or retention in employment the time required under subsection (1) precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part."~~

Section 5. Section 39-71-907, MCA, is amended to read:

"**39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation.** (1) A person certified as vocationally handicapped who receives ~~a personal~~ an injury ~~arising out of and in the course of employment and resulting~~, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

~~**Section 7.** Section 39-71-908, MCA, is amended to read:~~

~~"**39-71-908. Notification of fund of its potential liability under part -- review by fund.** Not less than 90 or more than 150 60 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter After notification, the fund may review, at reasonable times, such the information as the insurer has regarding the accident and the nature and extent of the injury and disability."~~

~~**Section 8.** Section 39-71-909, MCA, is amended to read:~~

~~"**39-71-909. Effect of fund's failure to give notification of its intent to dispute liability -- subsequent notification by fund authorized Insurer to pay benefits -- reimbursement by fund.** If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial~~

~~benefits, the~~ The insurer ~~shall continue to make payments on behalf of the fund and shall~~ must ~~be reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined."~~

NEW SECTION. **Section 6. Transfer and credit of excess funds held in subsequent injury fund.** ~~(1) On or before December 31, 1997, the department of labor and industry shall retain an independent actuary to calculate fully developed case reserves for those claims that are the liability of the fund.~~

~~(2) Claims that are identified and that are being reimbursed from the fund on or before July 1, 1997, must be paid from the reserves.~~

~~(3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in the fund.~~

~~(4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3) in the fund, if any, must be transferred to the administration~~ ON OR BEFORE SEPTEMBER 1, 1997, THE DEPARTMENT OF LABOR AND INDUSTRY SHALL TRANSFER $3.5 MILLION OF THE FUNDS RETAINED IN THE FUND TO THE fund in 39-71-201 and ~~credited~~ CREDIT THE AMOUNT to ~~insurers~~ OFFSET THE INSURER'S ASSESSMENT FOR THE ADMINISTRATION FUND as follows:

~~(a)~~(1) ~~A proportionate share of the remaining funds to be credited must be allocated among plan No. 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for the preceding 5 years bear to the total assessment in the preceding 5 years.~~

~~(b)~~(2) ~~The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No. 1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation. The credit must be allocated among insurers proportionately based on the prorated share that the amount the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund in 39-71-201.~~

~~(c)~~(3) ~~The shares allocated to plan No. 3, the state fund, must be credited to the state fund's~~

~~assessment for the administration fund in 39-71-201~~

(1) PLAN NO. 1, $490,000;

(2) PLAN NO. 2, $612,500; AND

(3) PLAN NO. 3, $2,397,500.

NEW SECTION. **Section 7. Repealer.** Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are repealed.

NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 1].

NEW SECTION. **Section 9. Effective dates.** (1) [Sections 1 through ~~8~~ 5 and ~~10~~ 7] are effective January 1, 1998.

(2) [Sections ~~9~~ 6 and ~~11~~ 8 and this section] are effective on passage and approval.

-END-

SENATE BILL NO. 375

INTRODUCED BY THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, ~~39-71-906,~~ AND 39-71-907, ~~39-71-908, AND 39-71-909,~~ MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Assessment of insurers -- definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) EXCEPT FOR MEDICAL BENEFITS IN EXCESS OF $200,000 PER OCCURRENCE THAT ARE EXEMPT FROM ASSESSMENT, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 INSURED employer, and plan No. 3, the state fund~~, a proportion of the amount expended from the fund during each calendar year. THE TOTAL AMOUNT OF FUNDS RETAINED IN THE FUND PLUS THE ASSESSMENT MAY NOT EXCEED TWICE THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE PRECEDING CALENDAR YEAR. The total assessment amount~~ COLLECTED ~~must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses~~ REIMBURSED ~~from the fund for the calendar year preceding the year in which the assessment is collected.~~

~~(3) The portion of the total aggregate assessment that must be collected from all plan No. 1 employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid~~

REFERENCE BILL
AS AMENDED

~~from the fund in the calendar year preceding the year in which the assessment is collected~~. THE ASSESSMENT AMOUNT IS THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE PRECEDING CALENDAR YEAR AND THE EXPENSES OF ADMINISTRATION LESS OTHER INCOME. THE TOTAL ASSESSMENT AMOUNT COLLECTED MUST BE ALLOCATED AMONG PLAN NO. 1 EMPLOYERS, PLAN NO. 2 INSURED EMPLOYERS, AND PLAN NO. 3, THE STATE FUND, BASED ON PAID LOSSES FOR THE CALENDAR YEAR PRECEDING THE YEAR IN WHICH THE ASSESSMENT IS COLLECTED. THE BOARD OF INVESTMENTS SHALL INVEST THE MONEY OF THE FUND, AND THE INVESTMENT INCOME MUST BE DEPOSITED IN THE FUND.

~~(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, is as follows:~~

~~(a) on plan No. 1 employers, based on paid losses;~~

~~(b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and~~

~~(c) on plan No. 3, the state fund, based on paid losses.~~

~~(5)~~(4)(3) On or before ~~February 1~~ MARCH 31 each year, the department shall notify each plan No. 1 employer, PLAN NO. 2 INSURER, and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before ~~February 1~~ MARCH 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify PLAN NO. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

~~(6)~~(5)(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. I employers during the preceding calendar year.

~~(7)~~(6)(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 INSURED employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 INSURED employer bore to ~~that~~ the total paid losses of all plan No. 2 insurers during the preceding calendar year.

~~(8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to~~

~~generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any anticipated deficiency based upon the allocation for that calendar year determined under subsection (3). Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund, shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.~~

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~~(10)~~(8)(7) Each plan No. 2 insurer providing workers' compensation insurance ~~shall~~ MAY collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium. ~~The assessments must include any amounts paid by plan No. 2 insurers on behalf of their policyholders to cover an emergency assessment by the department during the previous calendar year.~~ When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

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compensation and employer's liability insurance pursuant to the provisions of this part.

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(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

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(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner."

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"**39-71-504. Funding of fund -- option for agreement between department and injured employee.** The fund is funded in the following manner:

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in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

~~(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

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~~(2) Claims that are identified and that are being reimbursed from the fund on or before July 1, 1997, must be paid from the reserves.~~

~~(3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in the fund.~~

~~(4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3) in the fund, if any, must be transferred to the administration~~ ON OR BEFORE SEPTEMBER 1, 1997, THE DEPARTMENT OF LABOR AND INDUSTRY SHALL TRANSFER $3.5 MILLION OF THE FUNDS RETAINED IN THE FUND TO THE fund in 39-71-201 and ~~credited~~ CREDIT THE AMOUNT to ~~insurers~~ OFFSET THE INSURER'S ASSESSMENT FOR THE ADMINISTRATION FUND as follows:

~~(a)~~(1) ~~A proportionate share of the remaining funds to be credited must be allocated among plan No. 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for the preceding 5 years bear to the total assessment in the preceding 5 years.~~

~~(b)~~(2) ~~The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No. 1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation. The credit must be allocated among insurers proportionately based on the prorated share that the amount the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund in 39-71-201.~~

~~(c)~~(3) ~~The shares allocated to plan No. 3, the state fund, must be credited to the state fund's~~

~~assessment for the administration fund in 39-71-201~~

(1) PLAN NO. 1, $490,000;

(2) PLAN NO. 2, $612,500; AND

(3) PLAN NO. 3, $2,397,500.

NEW SECTION. **Section 7. Repealer.** Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are repealed.

NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 1].

NEW SECTION. **Section 9. Effective dates.** (1) [Sections 1 through ~~8~~ 5 and ~~10~~ 7] are effective January 1, 1998.

(2) [Sections ~~9~~ 6 and ~~11~~ 8 and this section] are effective on passage and approval.

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 20, 1997, at 3:24 P.M., in Room 415.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 375, SB 364; 2/17/97	
Executive Action:	SB 353	TABLE
	SB 325	DO PASS
	SB 290	DO PASS AS AMENDED
	SB 349	DO PASS AS AMENDED
	SB 350	DO PASS
	SB 375	DO PASS AS AMENDED
	SB 364	TABLE

HEARING ON SB 375

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Jacqueline Lenmark, American Insurance Association
Mark Barry, State Fund
George Wood, Montana Self-Insurers' Association
Oliver Goe, Montana Municipal Insurance Authority and Montana Schools Group Risk Retention Program
Ray Barnicoat, Montana Association of Counties

Opponents: **None.**

Opening Statement by Sponsor: **SEN. FRED THOMAS, SD 31, Stevensville** stated that the Workers' Compensation Subsequent Injury Fund is a special fund created by statute in 1973.

The purpose of the Subsequent Injury Fund was to act as an incentive to employers who hire those workers who have sustained a previous injury. This injury could be, for example, loss of a hand. That resulting impairment is obviously an obstacle to obtaining future employment. When a worker is medically certified with a permanent impairment which is a substantial obstacle to obtained employment or re-employment, the worker may obtain certification from the Department of Labor that he or she is vocationally handicapped.

When an employer hires a certified handicapped person, the employer then receives protection under the Workers' Compensation Act. If the vocationally handicapped person has become an employee, and is injured on the new job, he or she is subject to a maximum period of 104 weeks of benefits to be charged against the current employer.

Further benefits are paid reimbursed to the employer's insurer or whatever plan is involved from the Subsequent Injury Funds. Funding of this fund has been by assessment on all Workers' Compensation insurers.

Currently, the funding method is an assessment on each insurer not to exceed 5% of an insurer's total compensation paid in Montana's preceding fiscal year. Funds are held by the Board of Investment, the current fund is fully reserved for all liabilities and potential liabilities are reported to the fund at this time.

Across the country, the Subsequent Injury Funds are being repealed and because of this, scrutiny has been brought to ours in Montana. The consensus of the insurers that operate in Montana and deal with the Subsequent Injury Fund is to address the funding mechanism and make it equitable and correct as best as possible. This legislation changes the funding and payment mechanism currently in statute from the fully reserved fund to a cash flow assessment, with a payment of benefits to the subsequent injured workers.

The reason for the funding change is upon review, it was discovered that the three plans are funding this Subsequent Injury Fund in a very disproportionate percentage to their ability to accept reimbursement from the Fund. Plan 3, the State Fund, has contributed a consistently higher percentage of funding to the Fund, yet has been the least able to draw from the Fund and get workers certified and back to work in the scenario given.

Proponents' Testimony: **Jacqueline Lenmark, American Insurance Association** said, to reiterate, the Subsequent Injury Fund was created in 1973 as an incentive for employers to hire injured workers. This law is not a benefit to insurers, it is a benefit to employers and employees but the funding mechanism has become a problem.

This bill amends the law to preserve the benefit for the employee which is an incentive to hire a handicapped worker. It also amends the law and still preserves the benefit for the employer, which is, if that handicapped person is injured after employment, the employer's experience modification is protected.

The only change is to the funding mechanism, is going from a fully reserved fund to a cash flow method. The insurers are responsible for the benefit payment after that employee is injured. The insurers will still be responsible and will be reimbursed from this Fund to protect that experience modification facet of the law.

Ms. Lenmark stated the reason they looked at this issue is that there is a trend right now around the United States to repeal the Subsequent Injury Fund. That trend was prompted by the enactment of the Americans with Disabilities Act and states are beginning to believe that these funds are no longer necessary. They felt that it was important to continue to offer an incentive rather than a hammer for employers to hire handicapped workers, so they do not recommend repealing the fund, but rather preserving it and changing this particular funding mechanism. Nine states have already repealed this kind of fund and it's under consideration in a number of other states.

Mark Barry stated that State Fund supports SB 375. He referred to **(EXHIBIT 1)**.

Mr. Barry said the only thing this bill does is address the funding mechanism of the Subsequent Injury Fund. The current funding mechanism, on the first page shows there is a percentage applied toward the compensation payments paid in the State of Montana by plans 1, 2, and 3. In this current fiscal year, the actuary hired by the Department of Labor had determined that .7% is the factor to use against compensation payments. As you can see, for fiscal '97 the funding is $602,000. The State Fund is paying most of it because the State Fund pays most of the benefits in the state.

The next page shows, currently the risk sharing in the way the Subsequent Injury Fund is funded, is a shared risk between plans 1, 2 and 3. The proposed law will allow each plan to fund its own access of the Subsequent Injury Fund. There won't be a subsidization from plan 3 to plan 1.

The next page shows you what the impact has been, primarily on the State Fund. The color red is the assessments which have been

paid since fiscal year '92 to fiscal year '96 by plans within the fund. The green color shows the benefits paid out by plan. As you can see, we're in favor of this bill because plan 3, the State Fund, has been funding the lion's share of the Subsequent Injury Fund. This showings that we are moving away from this type of subsidization to a different type of funding mechanism. The next sheet, titled "Proposed Assessment Method for Funding the Subsequent Injury Fund", is showing that if in a fiscal year, or a calendar year as the way the bill is written, if plan 1 pays out $10,000, plan 2 pays out $30,000, and plan 3 pays out $60,000. That's the amount that will have to be collected by those plans in the next fiscal year to fund the Subsequent Injury Fund, i.e. a cash flow basis. This is assuming the cash payment and the fund would be $100,000, which is approximately how much has been paid out in the past; however, that depends on whatever the payment is.

Mr. Barry further stated there is currently a balance in the Fund over and above what's needed in reserve for the claims that are currently being paid out of the Subsequent Injury Fund. What this bill is doing is crediting back to each plan a portion of this excess. It's being credited back to the amount in the Department of Labor administrative assessment, 39-71-201 that has been addressed in SB 290. The disbursement is based on a percentage paid into the fund in the past five years. If we assume the excess balance is $3 million, then under our estimates, $400,000 would go to Plan 1 administrative assessment as a credit, $574,000 would go to Plan 2 as a credit to their Department of Labor administrative assessment, and $2,000,000 to the State Fund.

He referred to the display that shows the State Fund has funded a good portion of the Subsequent Injury Fund Assessment. The remaining pages are information of how the certification process and payment process works within the Fund.

Mr. Barry stated that the State Fund supports this bill and the amendments to the bill.

George Wood, Montana Self-Insurers Association, said they support this bill as amended, as a realistic change in the method of funding the Subsequent Injury Fund. He said they support but all three plans would recommend the committee report this bill DO PASS.

Oliver Goe, Montana Municipal Insurance Authority & Montana and **School Group Risk Retention Program,** said he represents plan 1 insurers of cities, towns and school districts throughout the state. They urge a DO PASS on the bill.

Ray Barnicoat, Risk Manager for Montana Association of Counties, said they are Plan 1 insurer for Workers' Comp, insuring over 5,000 employees around the state. They also stand in support of the bill as amended and recommend a DO PASS.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 3:43 p.m.}

Questions From Committee Members and Responses: **CHAIRMAN TOM KEATING** stated that in the fiscal note it shows the assets are $5 million and assets distribution to $3.5 million. Is that asset the reserve and are you drawing down the reserve? Does it jeopardize your actuarials?

Mark Barry answered the $5 million dollars are assets, not reserves, and are estimated assets at the end if this fiscal year. The $1.4 million are reserves on known cases, based on the number from the Department of Labor's actuarial report they had done as of fiscal year '96. The $85,000 is an estimated one year's payments and the $49,000 is administration of the Fund. To come up with the $3.5 million, you might ask the Department if they have any other numbers because these numbers came from the State Fund.

CHAIRMAN KEATING stated that it says the estimated reserve for known claims, the claims are the debit and are the assets in cash or furniture? What are the assets?

Mark Barry responded the assets are invested assets, and again you might want to discuss that with the Department.

CHAIRMAN KEATING said they are drawing down the assets, and apparently everybody is satisfied with that. $3.5 million in reserve or in assets is sufficient and this doesn't change your actuarials.

Mark Barry said it should not. Again, the Department of Labor is the one that manages the Fund. You might want to address that with the Department.

Keith Messmer stated he is a program specialist in the Employment Relations Division. The one thing missing from the fiscal note on the reserves are the reserves we maintain for incurred but not reported claims. Those are claims that the actuary says are out there but they have not yet been reported, and are at approximately $1.2 million at this time.

CHAIRMAN KEATING said so we're not in danger of an unfunded liability or anything like that.

Keith Messmer answered it depends how you define unfunded liability. We would no longer be looking at reserves on those claims but rather we would be assessing based on the amount paid in the previous calendar years.

CHAIRMAN KEATING said then you're keeping it actuarially sound by assessing after the fact.

Keith Messmer responded that is correct.

Closing by Sponsor: **SENATOR THOMAS** stated he didn't want to confuse the fiscal note, but the $85,000 in one year's estimated payments is actually potentially some IBNR which have occurred prior to 7/1/97 but reported on or after that date. I think you have a bill and the amendments have been drafted shortly and that's why there's not complete understanding. However, there is consensus on them.

{Tape: 1; Side: A; Approx. Time Count: 3:47 p.m.; Comments: N/A.}

HEARING ON SB 364

Sponsor: **SEN. SUE BARTLETT, SD 27, Helena**

Proponents: **Kate Choleva, Montana Women's Lobby**
Terry Kendrick, Private Citizen
Janet Brooke, Montana Child Care Network
Raquel Castellanos, Working for Equality & Economic Liberation (WEEL)
Sharon Hoff, Montana Catholic Conference
Suzanne A. Grubaugh, Salvation Army
Tina M. Allison, WEEL/FAIM AFDC Recipient
Melissa Case, Hotel/Motel Union
Russell LaVogne, People's Law Center
Tara Mele, Public Interest Research Group
Derrick Birnie, Montana Peoples Action
Don Judge, Montana AFL/CIO
Dean Randash, NAPA Auto Parts
Sheila Hogan, Montana Displaced Homemakers Network

Opponents: **Peter Blouke, Department of Commerce**

Opening Statement by Sponsor: **SEN. SUE BARTLETT, SD 27, Helena,** introduced SB 364, The Livable Wage for Families Act. She said there has been much attention given to Welfare Reform, changing our approach to emphasize work in our public assistance program. This bill is an effort to focus attention on the other size of that equation, specifically, on jobs that pay a liveable wage.

SB 364 would direct the resources available through state government for economic development efforts and the expansion, attention and location of businesses in Montana, and would require those resources to carry with them the obligation for an employer to pay employees at or above a livable wage.

Referring to page 2, starting on line 7, livable wage is defined as 150% of the federal poverty level for a family of two. This year that would amount to an hourly wage of $7.47/hour, which makes the annual income for a full time employee, working year around, $15,538.

SEN. BARTLETT further stated SB 364 is designed to apply only to public financial assistance, not to the technical assistance that businesses may receive, or advisory assistance of those kinds of assistance that are provided in a variety of places in state government, but to types of assistance that would affect a balance sheet. These include grants, loans, tax incentives or abatements, bond financing and reduced interest rates. Another important factor in terms of what is affected is that any business receiving $25,000 or less in public financial assistance from the state would not be affected by this bill. The assistance would have to total more than $25,000.

She said she has made a concerted effort in shaping this bill to use systems already in place in state government. Having heard and having really listened to businesses over the last few years, **SEN. BARTLETT** said she realizes the extent to which they're tired of having a variety of people traipse through their businesses to check on this, that or the other thing. Consequently, she worked to place the mechanisms for this bill in the existing systems of state government. The livable wage amount would be posted on the state bulletin board, to be available to anyone who would be interested. Employees who might believe the livable wage requirement in a particular business had been violated would have the right to file a wage claim with the Department of Labor and Industry, but it would go into the wage claim process used for all other wage claims in the currently existing system of state government.

Similarly, the Department of Labor & Industry would be the Department responsible for monitoring compliance with this law, and to the largest extent possible would do that through existing systems they already have in place, so we would not be adding layers of nuisance factors for businesses.

There are penalties if a business were to accept public financial assistance of more than $25,000 and then fail to pay the liveable wage, i.e. public financial assistance would be terminated immediately. The business would be required to pay back the assistance received previously, with interest, and would be ineligible to receive public financial assistance for 5 years.

This bill is designed to address the economic development efforts of the state and to direct those efforts toward industries and employers which are the types of industries and employers we want to encourage in the State of Montana, those that would pay a livable wage.

She referred to one technical amendment **(EXHIBIT 16)**. She said she had put a phrase in the wrong spot in the bill the amendment corrects this.

{Tape: 1; Side: A; Approx. Time Count: 3:53 p.m.; Comments: N/A.}

Proponents' Testimony: **Kate Choleva, Montana Women's Lobby,** gave her testimony. **(EXHIBIT 2)**

Terry Kendrick said he worked for the Western Region Economic Development in Missoula, a team of people from the Job Service, Health & Human Services, the College of Technology and other community agencies working to develop strategies that assist businesses in their efforts to create better quality jobs.

In western Montana many of the jobs being created are in the low paying end of the service sector, and many of those available jobs are part time with no benefits.

He said according to data collected by Larry Swanson of the University of Montana, the 5 value region in western Montana ranks 19th out of 20 peer regions for worker earnings. Information distributed by Montana's Department of Labor in "The Profile of the Montana Worker", which comes out annually, shows two years ago Montana ranked 40th in the nation in per capita income. This past year Montana ranked 44th. This is not a trend that Montana families can afford.

He supports efforts to direct Montana's economic development fund in ways that benefit families and communities. It doesn't make sound economic sense to loan or grant money to a business whose employees who come back to the government for money in forms of state funded child care or food stamps or Medicare. If one of the state's goals is to get people off public assistance, hopefully the state will then too take a role in providing incentives to employers to create jobs that pay a living wage.

SB 364 provides an opportunity for Montana to direct limited economic development resources in a way that will encourage the growth of businesses that support families, revitalize the economy, and decrease dependence on public assistance.

Janet Brooke, Montana Child Care Network, said they work with parents looking for child care, and with a lot of parents who are low income and receive child care support while they work towards self-sufficiency.

They support this bill. Child care is a big expense for parents. Earning a living wage will help parents pay for the cost of their child care, and this is important when these families work toward self sufficiency and can maintain their families and their households on their own living wage.

Raquel Castellanos, WEEL, handed out **(EXHIBIT 3)**, which is her written testimony. See **(EXHIBIT 4)** Newsletter for WEEL.

{Tape: 1; Side: B; Approx. Time Count: 4:07 p.m.; Comments: N/A.}

Sharon Hoff, Montana Catholic Conference, gave her testimony. **(EXHIBIT 5)**

Suzanne Grubaugh, Social Work Intern with Salvation Army, handed out **(EXHIBIT 6)**, written testimony.

Tina M. Allison, WEEL, FAIM - AFDC Recipient, see **(EXHIBIT 7)** written testimony.

Melissa Case, Hotel/Motel Union, stated her union has worked on a national level on this particular issue.

She handed out the Baltimore study **(EXHIBIT 8)**, which relates to the Baltimore living wage ordinance that was passed in December, 1994. Other localities have already passed living wage ordinances, which is a trend across the nation.

She thinks it's an important time to shift the debate from a minimum wage to a living wage and that what we want to do is start standardizing that to a living wage, so we're making sure citizens of this state can make a living wage.

Ms. Case also thinks some of the questions that are going to come up are regarding contracts the cities or states would have with entities and costs associated with those things. In Baltimore the real cost of city contracts actually decreased by 2.4% since the ordinance went into effect. There was an argument made that the cost of actually getting contracts would increase because the cost of labor would increase, but that is not so.

Russell LaVigne, People's Law Center, appearing on behalf of **Montana Low-Income Coalition and Montana Welfare Action Coalition.** See **(EXHIBIT 9)**, written testimony.
Also see **(EXHIBIT 10)**.

Tara Mele, Montana Public Interest Research Group, said they would like to go on record in support of this bill. They have worked against corporate welfare, at least asking corporations to take care of their responsibilities.

Derrick Birnie, Montana Peoples' Action, said with welfare reform coming down the pike and jobs really becoming an issue for people, we've started to do a lot of research into how to do economic development and address the needs for people.

They've sent staff members to meetings with the Senate of Community Change in Washington, DC, with the Northwest Federation of Community Organizations in Seattle and with the Applied Research Center in Santa Monica. A short list of economic development policies that would address the needs for localities to provide the jobs for people. The livable wage is one of the top subjects at all three meetings. They want to go on record supporting this and urged the committee to consider the bill positively.

Don Judge, Montana AFL/CIO, said they encourage the committee to give this bill their greatest consideration to be on the right

side of the bishops and the right side of God on this issue, that they not let the crunch of time impede reasonable understanding of this legislation.

They also encourage the amendment as been proposed by the sponsor, to pass it across to the House, and then if there are concerns we'll deal with it over there.

Dean Randash, NAPA Auto Parts, Helena, said he rises in support of a living wage.

He has supported a living wages for 25 years and has supplied his employees with everything he could for that living wage. He said he has no problem with the government wanting to help families off welfare, to improve their standard of living, and to do that through incentives.

He also doesn't have a problem with government targeting various classes of employees to help them bridge the gap from the low, probably welfare, levels of income to higher levels of income so it's not an immediate step. He doesn't have a problem with government working with incentives to advance commerce, but through small business or business.

Mr. Randash requested with regard to this bill, is amendments that don't put those people who are getting government money in competition in the wage force against him. He paid his employees an average wage of $20,000 last year, which equates to probably $8 or $9 an hour. Here we're putting people immediately starting out at $7.50 - $7.40 an hour, subsidized by the government. He asked why he should work 25 years of my life helping employees and myself, only to be undercut by government.

Secondly, he thinks it's unfair to discriminate against single men or women or non-families over families. He said his dad's old school of thinking was when he went to work, he was single and didn't need to earn as much money. So he didn't get as much money because he didn't have a family and the family people got more. Then the evolution was the family situation didn't make any difference. Why should certain people be discriminated against for this?

The third thing is, it drives up the cost of taxes, the cost of government. **Mr. Randash** stated, "My people, myself, my productivity has to pay more in taxes to support this very thing. Let's be honest, if we're going to subsidize these people, let's subsidize them. If you go to work for $5.00 an hour, fine if you want to pay another $2.50 per hour, but let's do it above the table and not below the table".

The fourth thing is a guaranteed wage does not promote productivity, does not promote efficiency, it takes competition in the market place for labor and wages in order to promote

competency and caring and good work, on the part of himself as well as other employees.

He urged a DO PASS on this bill, but strongly recommended an amendment so it does not compete with ability to hire employees.

{Tape: 1; Side: B; Approx. Time Count: 4:28 p.m.; Comments: N/A.}

Sheila Hogan, Montana Displaced Homemaker Network, said she would like to speak in support of this legislation. The Montana Displaced Homemaker Network has 12 centers that provide services throughout the state. A displaced homemaker is someone who is not necessarily on public assistance rolls but are at risk of falling on those rolls. They're trying to hang onto their houses or their property because of divorce or death, i.e. people who want to work.

Ms. Hogan said she is sure that we'd all agree family self-sufficiency is a directive from society that we've all heard over the past couple of years. They feel this bill would allow employers, who receive any type of public subsidies, to contribute to this initiative, i.e. establish self-sufficiency.

She said they really want the people we see to be self-sufficient, and minimum wage does not allow self-sufficiency. They may not be on public assistance, but oftentimes they qualify for hot lunch, LIAP and for a variety of other programs. Those folks are really not self-sufficient.

{Tape: 1; Side: B; Approx. Time Count: 4:30 p.m.; Comments: N/A.}

<u>Opponents' Testimony</u>: **Peter Blouke, Dept. of Commerce,** said he reluctantly rises in opposition to SB 364 he supports the concept **SEN. BARTLETT** is trying to put forward.

He said he is very familiar with the relationship between welfare reform and the availability of jobs and am sensitive to that issue. Within the Department of Commerce we are very actively and aggressively pursuing job development through a number of programs operated within the Department and they would be very directly affected by this bill.

Just listing through some of them, the micro-business finance program we use to assist new companies to start up. Most of these are small companies in a very competitive environment, and if they receive funding through this bill and are required to have a higher wager than their neighboring competitor, it's unlikely they would survive. In regard to the Community Development Block Grant Program for economic development, we put out an awful lot of money through that program to again assist new start up, new businesses, new jobs for people in Montana. The Job Investment Loan Program is another program we operate that is geared for starting up jobs.

Two areas **Mr. Blouke** think are really significant: (1) The Board of Investments which provides loans to businesses in Montana. He said he had a discussion with Mr. South regarding this and he's very concerned that many of the loans they make are in conjunction with banks and banks would be reluctant to participate in the loans if this law were passed;
(2) For those loans currently outstanding on businesses that are not meeting minimum wage, if they would have to call those loans in.

Another program that's operated through the Department of Commerce is the Health Facilities Authority with which I think many of you are familiar. It's a program that provides low interest loans to health facilities such as developmental disability group homes, a lot of the rural hospitals and some of our state institutions.

One of the problems is if the developmental disability group homes and some of the mental health group homes were required to pay a minimum wage, there would be a very significant fiscal impact on the state budget because the budget would have to be raised since the Department of Health and Human Services reimburses them.

The same is true in the nursing home industry because many of the loans made go to nursing homes; again, this is a sector where there are minimum wage jobs and if they had to pay the livable wage a substantial increase in the Medicaid budget would be required to offset those costs in the nursing home.

Mr. Blouke further stated is it's nice to have a livable wage and supports that; however, it's a very complicated and complex issue in terms of what are really the ramifications of doing this. The effects are not only in terms of creating jobs in a competitive environment (and the competition for a lot of these jobs aren't just within Montana but are intrastate and international) but are also in terms of maintaining a competitive edge or we won't have any jobs available to assist in the welfare reform.

{Tape: 1; Side: B; Approx. Time Count: 4:35 p.m.; Comments: N/A.}

<u>Questions From Committee Members and Responses</u>: **SENATOR BENEDICT** asked **Peter Blouck** if he was familiar with the acronym WEDGO?

Peter Blouck answered no.

CHAIRMAN KEATING said that acronym stands for Women's Economic Development Group out of Missoula and believes the Micro-Business Development program helps fund the loans for WEDGO.

Peter Blouck said that you have explained and refreshed my memory, he was somewhat familiar with that, not on a very technical level though.

SENATOR BENEDICT said his question is fairly simple. He thinks we tend to think the only ones that get tax breaks from the State of Montana are those big businesses. WEDGO, on the other hand, is an organization that helps displaced homemakers and helps women who would like to start their own small companies to be able to do that. He thinks they have made in excess of several hundred loans throughout Western Montana to women. Do you think this bill, even though it passes through from the MicroBusiness Development Corp. into WEDGO to help fund those loans, would impact and probably put a lot of those several hundred, small, two-or-three-person women's companies out of business.

Peter Blouck answered, he didn't think so because the threshold is $25,000 or more per company. He thought the loans would be under that threshold. Referring to your corporate welfare going to big business, a lot of our economic development is in very marginal mental health facilities and developmental disabilities facilities; those are right on the margin.

SENATOR BENEDICT said SBIC has the ability to loan smaller amounts of money and the MicroBusiness Development Corp. contracts with SBIC and the threshold is $25,000 or below, so some of these women have loans that are very small to help them start their companies. The way he reads this bill, that would severely impact the ability to see their companies survive.

Peter Blouck said as he understood the bill, the loan has to be greater than $25,000 before the mandatory wage kicks in.

SENATOR EMERSON asked **Tina Allison** if she was talking about $1,800 a month, which translates into about $22,000 a year, and was she saying that she was living on that budget now?

Tina Allison answered she was, but was not self-sufficient on that budget. Until two months ago she was working at St. Patrick's Hospital and making a pretty decent wage. If she had been working someplace else like McDonald's at $5.00 an hour, she wouldn't be making it. She gets assistance from AFDC, from FAIM, Missoula Housing, food stamps; without all of that she wouldn't be self-sufficient.

She stated she is sure she will be even after she receives her diploma because the best she can hope for right now is $18,000 a year.

SEN. DALE MAHLUM asked **SEN. BARTLETT** if she had a loan from the SBA would that be affected with this?

SENATOR BARTLETT answered she thinks that would depend on whether it ran through state government at all. If it is one of the SBA programs operated with commercial lenders completely between the federal government and SBA and the lender and the recipient, it would not be affected at all.

SEN. BILL WILSON stated that **Mr. Randash** talked about how some way this bill discriminated between someone who was married and someone who was single. **SEN. WILSON** could not see something in relation to that and I thought the intent of this bill is not to. It's 150% of poverty level whether you have a family or not.

SENATOR BARTLETT stated for a proposal like this, obviously you have to establish some clearly identifiable level. I selected the 150% of poverty for a family of two as an indicator of what that level should be. It would apply to jobs regardless of whether the person who held the job had four children and a spouse or was single.

SENATOR BENEDICT asked **Terry Kendrick** if he worked for WEDGO? The goal or the vision of the organization is to help women get started in their businesses to provide the start-up financing. Is that correct?

Terry Kendrick answered they work with women and men who are starting or expanding their own business.

{Tape: 2; Side: A; Approx. Time Count: 4:42 p.m.}

SEN. BENEDICT asked how many loans would you say are in that category?

Terry Kendrick answered he thought the vast majority of their loans fall in under $25,000.

SENATOR BENEDICT said once you get those started, let's say that you gave them $15,000 three years ago and they've finally gotten above that threshold where the $25,000, but they've gone on to create more jobs and maybe they're a little larger now and they've applied for maybe a commercial loan blended with another state loan that's above maybe the $25,000 threshold, how many would you say there are in that category?

Terry Kendrick responded he couldn't answer that question.

SENATOR BENEDICT asked if he would see a problem, though, with some of those businesses if there was blended state money with the commercial money, would it have a severe impact on those businesses if they all of a sudden had to jump to this livable wage in order to pay their employees?

Terry Kendrick answered he would say it is not out of the question, but there could be a problem there. What we see in terms of our borrowers, is the people we work with really want to pay a livable wage. That's actually part of the reason they say they want to produce a good product or service and they want to be able to pay really well.

SENATOR BENEDICT asked, but can they?

Terry Kendrick answered you have to ask yourself, can they pay off a substantial loan? They have to be able to be profitable. He would agree that it's possible there would be some friction there.

SENATOR MAHLUM said he was confused what this bill is strictly to do. If the State of Montana gives grants or loans or tax incentives to fledgling business, it has nothing to do with anything except what is granted by the state.

SENATOR BARTLETT said that is the intent. We have, I'm sure, all learned in one bill or another that words can be like a wet bar of soap and get a little bit slippery on you, I will tell you that is exactly the intent, it's limited to assistance that is provided through state channels from the state.

SENATOR MAHLUM asked if the county was to give you $20,000 to start up a business, and the state had loaned the county some money through one of these grants, could this come back because they did got the money from the state originally and yet the county is giving it to the recipient?

SENATOR BARTLETT said she thought he dropped the bar of soap into the water. To her, when the state gives grants or money to the county, that is going to a county. If the county turns around and deals with a business, that is a separate transaction. She is not sure they have pinned that down exactly what the definitions in the bill are. She had wanted to limit this to state because when you get into counties, you have such diversity that it's just beyond dealing with in a reasonable fashion. She said she also wanted to limit it just to assistance provided by the state to a business.

CHAIRMAN KEATING asked **SENATOR BARTLETT,** regarding the tracking of some dollars, the legislature, in the last session increased the coal tax allowance to the small business program whereby the coal tax money could be used for loans for start-up of small enterprise businesses around the state. He thinks there's a couple million dollars in that fund and the loans run as high as $100,000 for the start-up of the small businesses that have 10 to 15 employees. The program is run by the small business operators themselves. They have their own committee, their own board, and review the applications and so on. Those are tax dollars from the state to that group and they make those loans. If they borrowed this money for start-up because it is a very low interest loan and becomes public assistance because of the relief of the payment of that interest, and the tax money we're lending them is not receiving the same amount of interest it would receive otherwise for the benefit of the state, it appears under this bill they would be required to pay 150% of the poverty level of two people, which you said was $7.40 an hour equal to $15,000 a year.

SENATOR BARTLETT said that's 150% of the poverty level.

CHAIRMAN KEATING said under that scenario that would be public assistance and they would have to be paying $7.40 an hour. Is that the case?

SENATOR BARTLETT answered yes, but it's $7.47 an hour.

CHAIRMAN KEATING stated some of those businesses are competing with like businesses in the same area. The other businesses have gotten commercial loans and are not under public assistance and they're paying $6.47 an hour instead of $7.47. Wouldn't they be having an advantage over that start-up to small business that we're trying to get going to hire people to go to work?

SENATOR BARTLETT responded she believed that's exactly the point that **Mr. Randash** was trying to make in his testimony as well. She said there are two or three other ways of looking at this.

One is this is an effort to make the state, in the undertaking it has for economic development, focus on industries and businesses that pay higher wages and devote our energies to those; therefore, the wage level would not be out of line with the wages customarily paid in that industry, regardless of whether the business individually receives some public financial assistance or not.

Secondly, that would certainly become a factor a business person would take into consideration in determining what kind of final package they wanted to put together. The advantage is the lower interest rate with the state assistance but then there's a higher wage level requirement that might be enough to offset any gain the employer would be interested in; therefore, they would find it a better business decision to go with a commercial lending route, even though it might mean a higher interest rate.

CHAIRMAN KEATING said then there's another avenue of public assistance, JAFKA is federal funds that subsidize the payroll for the employer who hires an employee through the job service or through the JAFKA program. That's public assistance. Do you know if there is an average wage under the JAFKA program now that is somewhat higher than the minimum wage?

SENATOR BARTLETT stated there isn't any set requirement. She said they're geared toward attempting to work toward certain wage levels, but doesn't believe they have a requirement.

CHAIRMAN KEATING said under this bill, the JAFKA program in Montana would establish $7.47 as a minimum wage for anybody who is in that program.

SENATOR BARTLETT said he was the first to have brought that particular program up. She is not convinced it falls within the intended concept of the bill; perhaps not even the wording we currently have in terms of what would constitute public financial

assistance but if it did, then that's an aspect she would want to be able to take into account and take a look at.

SENATOR MAHLUM. stated if a small business in Helena has been in business for 10 years and all of a sudden finds themselves in need of some money, they're going to get a loan somehow or another from the state. If they're currently paying their employees $6.50 an hour, do they automatically raise to $7.50 an hour when the loan comes through?

SENATOR BARTLETT. said they would have to receive a financial benefit of more than $25,000. Yes, at the point assistance is received and the wage level to be paid would be $7.47 an hour.

SENATOR MAHLUM. stated let's say you've got two people working and one gets $6.50 an hour, one gets $7.50 an hour. You're going to raise the $6.50 to $7.47 an hour but what are you going to do with the $7.50 an hour? To be equitable, you should raise him up too, shouldn't you?

SENATOR BARTLETT. responded clearly, that is a decision the employer would have to make. She said those are aspects that should be taken into account in determining where I wanted to go for assistance.
{Tape: 2; Side: A; Approx. Time Count: 4:57 p.m.; Comments: N/A.}

Closing by Sponsor: **SENATOR BARTLETT.** stated she appreciated the hearing and the concerns expressed by **Dr. Blouck** and the questions of the Committee. This is an area that needs to be looked at critically. It is not her intent to do damage to the efforts of the state to encourage business to but she would like to see us focus our efforts on industries and businesses which would customarily pay at a wage level where this proposal would not disrupt their standard business practices. One of the biggest safeguards, and it was written in precisely for things like the Micro-Business loans, the average of which generally runs about $13,000 to $14,000, was in fact the threshold of $25,000 because of the need for some truly micro seed money to help an individual get over the hump and into a real chance at some commercial success, rather than sort of a off-my-kitchen table operation.

She pointed out the December, 1996, information on the wage levels for production workers excludes, not includes, supervisory or government payroll personnel. For the State of Montana the average hourly earnings in all industries in Montana was above $7.47 an hour. She said that we're talking about an average, but that reinforced belief that the livable wage proposed in this bill is a reasonable one that can be met without disrupting the market place. The industry closest to it was retail trade which in December the average hourly earning was just about exactly at that level; however, they were $7.47 an hour in Montana. She believes this is a legitimate effort to focus our work in the state on producing higher wage jobs for Montana. If there is a

need to make that clear in the language, she is willing to work on amendments which may need to occur, given the timing in the House Committee, but I would guarantee those amendments would be taken care of. She asked for favorable consideration of the bill.

EXECUTIVE ACTION ON SB 353

Motion: **SENATOR THOMAS MOVED TO TABLE SB 353.**

Vote: **Motion CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 325

Motion: **SENATOR BENEDICT DO PASS ON SB 325.**

Vote: **Motion CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 290

Amendments: See **(EXHIBIT 11 & EXHIBIT 12).**

Motion: **SENATE EMERSON MOVED DO PASS ON SB 290.**

Discussion: **CHAIRMAN KEATING** stated the first amendment is a two-page amendment. In the lower right hand corner is the number 29005 and these are additions that are made. This is putting the regulation advisory council, it changes the percentage from 2.15% to 2.6%. That increases the assessment to increase the revenue to the Dept. of Labor the other new sections. He asked **Ms. Lenmark** to explain the new sections. **Jacqueline Lenmark** stated all these amendments are consensus amendments.

The first new section, section #3, is the creation of a Workers' Compensation Regulation Advisory Council. That amendment was requested by the Department of Labor and the other proponents of the bill had no objections to it. This is to allow the creation of advisory council to further study the regulatory functions of the Dept. of Labor.

Section 4 is there only because of an effective date of coordination problem. If you look at your original bill, the intent of this bill is to have the old assessment method operate for the next biennium and then on July 1, we go to the new assessment method. There is a report by insurers that is necessary before that new July 1 date, and so to allow the sections to be correctly codified and to come into effect and be terminated in the appropriate sequence, it was necessary to create this one new section. It will have limited duration; as soon as the new system is in effect, this section will terminate.

Section 5 is simply the codification instruction for the advisory council, and it codifies that language not in the Workers'

Compensation Act. The remaining amendments are to clarify the sequence of the assessment transition. We're working from one method on one base to a different sort of base going to a calendar year. That's necessary to identify which years the old method applied to and which years the new method will apply to.

CHAIRMAN KEATING stated the second amendment is 29001 in the lower right hand corner. Section 1 deletes the assessment payment to the boiler inspection bureau to cover half the cost of that boiler section program. That money is coming out of administrative assessment, administrative fees under the assessment. That's not an appropriate fund for paying for the inspection of boilers and so we're adding into this bill the boiler inspection fees and setting the fees at a level that will fund the program appropriately. The fees are in statutes so there isn't any ruling or authority to change those fees at any time.

Motion: CHAIRMAN KEATING MOVED DO PASS ON AMENDMENT SB029001.AEM (EXHIBIT 11).

Motion: CHAIRMAN KEATING MOVED DO PASS ON AMENDMENT SB029005.AEM (EXHIBIT 12).

SENATOR THOMAS asked **CHAIRMAN KEATING**, when was the last time these fees were changed?

CHAIRMAN KEATING responded the fees were not changed in the last session. This function was transferred from Labor to Commerce and it was agreed then that half of the cost would come out of this assessment and the fees would pick up the other half. He didn't think the fees were changed.

John Mahoney of the Safety Bureau of Labor stated when the boiler function was transferred to Commerce, they increased the fees. He thought they just, in the last session, imposed those fees for an inspection.

CHAIRMAN KEATING said the choice here is to make the Workers' Comp Insurance people pay for inspections for boilers or make the people with the boilers pay for the inspections themselves.

SENATOR BENEDICT stated the Plan 1's and Plan 2's can afford it.

CHAIRMAN KEATING responded that's a matter of opinion. At any rate we heard the budget in the Department of Commerce and they can't do the program on the fees that are there and if you want the boiler inspection program they're going to have charge the fees in order to run the program. It has to be covered one way or the other. He thought those who are benefiting from boiler inspections would be willing to pay the fees so they can operate their boiler. If you aren't licensed or don't have a licensed boiler inspector or if your boiler is not inspected periodically

you can't operate it, under the law. If you can't operate it you've got a cold school or cold hospital or cold someplace in the winter time so he believed they would pay $26 or $30 dollars an hour for a couple of hours in order to be able to operate their boiler.

SENATOR MAHLUM asked how many of these fees are going to be charged to one place? For instance, will they have an external inspection and an internal and a hot water heating supply and a steam heating and a power boiler all at the same time?

CHAIRMAN KEATING responded he couldn't answer that. If nobody is comfortable with this, we can just vote it down.

Vote: **Motion DO PASS ON THE AMENDMENTS CARRIED 5-4.**

Motion/Vote: **CHAIRMAN KEATING MOVED DO PASS SB 290 AS AMENDED. Motion CARRIED UNANIMOUSLY.**

{Tape: 2; Side: B; Approx. Time Count: 5:29 p.m.; Comments: N/A.}

EXECUTIVE ACTION ON SB 349

Amendments: See **(EXHIBITS 13 & 14).**

Motion: **SENATOR EMERSON MOVED DO PASS ON AMENDMENT SB034901.AEM (EXHIBIT 13).**

Discussion: **SENATOR EMERSON** stated in some of the other bills we've gone to three years for a license and so he thought this ought to match. He said we'll strike 1 year and put in 3 years, we'll strike annually and put in every 3 years.

CHAIRMAN KEATING said this section of the law has been changed by SB 45, so if SB 45 survives, this will get done; however, if it doesn't survive it won't get done.

Vote: **Motion DO PASS ON AMENDMENT SB034901.AEM CARRIED 8-1.**

SENATOR THOMAS stated that a couple of these amendments [SB034908.AEM] can be segregated. He asked **Jim Hill** from the Department to explain the first two.

Jim Hill, Department of Labor explained the first amendment has to do with the conflict that exists when you share information out of our data base with insurers and the privacy issue. This amendment was created in an effort to specifically tell us what information we can share. That information is listed in this amendment as a result of our legal staff telling us this is the information we should be able to share with insurers. The last

part of the amendment has to do with the fact the insurer gets the information and must keep the information confidential.

The second amendment has to do with the report being created on an annual basis rather than biennial basis, as the original bill calls for. We've also asked that we add the section that says we may publish special reports. He thought the original law called for potentially quarterly reports, and asked that it be special reports.

SENATOR EMERSON asked if that is going to change the fiscal note?

Jim Hill responded no, it wouldn't. In particular the annual report is something that is for the most part automated at this point and would be relatively easy to create for the public. It wouldn't be substantially more.

Jacqueline Lenmark stated they do not have any objection to amendment number 1 if it could be amended to say the name and address of the insurance company or insurer and claim adjuster. The company insuring the claim is important information. The only thing added is insurer and claim after "the".

At the very end of the section, one of the disappointments of the insurers who have paid for this very expensive data base is they have not also had access to it for assistance in claims processing; therefore, they would like this information not isolated only to the prosecution of fraud but the use of the information gathered would also be for claims management or claims processing. They would like to see that language added at the end of amendment #1. If we're going to put all the parameters around it, we need to be clear it's not only prosecution of fraud but also investigation.

CHAIRMAN KEATING said for the investigation and prosecution of fraud.

Jacqueline Lenmark said she would also like the Committee to know the proponents of the bill, other than the Department, oppose amendment #2.

Motion: **SENATOR FRED THOMAS MOVED DO PASS ON AMENDMENT #1 AS IT WAS REDONE.**

Discussion: **SENATOR BARTLETT** asked **Ms. Lenmark**, regarding the provisions in the Montana Constitution on individual privacy, do you think that there is a compelling state interest in releasing information for investigation and fraud in claims sufficient to overcome the right to individual privacy by a person whose record would be released for those purposes.

Jackie Lenmark responded in her legal opinion, this language is not necessary at all. It is being proposed out of the Department's concerns they are protected from improperly

releasing information. When an injured person puts their medical condition into issue in a legal matter (and that's what would be happening in a Workers' Compensation claim), and there would be an injury, they waive the privacy rights they have to their records about their medical condition. That's a rule of evidence that exists apart from the Workers Compensation Act, so I think this isn't necessary in any event; however, to protect the Department we are certainly willing to agree it's there in the statute.

SENATOR BARTLETT asked when they waive their rights, waive the protection of their medical records, aren't those medical records ordinarily drawn from somewhere besides a central data base that is operated by a state agency.

Jackie Lenmark answered not necessarily. Those records could be housed with a number of different entities. If that condition is in question, that privilege has been waived by the person who puts it in issue. If they don't put it in issue, the privilege is not waived. If it is an issue, the privilege is waived.

SENATOR BARTLETT said regarding the amendment, she supports the language to make it clear for the Department what they can do, and thinks **Ms. Lenmark** is correct in that the language may be unnecessary, but also thinks it's important, as a reminder to people, there is a balancing test agencies must do anytime they're dealing with this kind of information. She is uncomfortable with the use of that information for claims management or claims processing. She carried the bill in the Senate which **REPRESENTATIVE CHASE HIBBARD** sponsored in the House. That established the data base in the first place. That was never a reason for that data base to be established and regarding medical records, it seems to her preferable for insurers to go to the medical personnel or facility having those records or to the other insurer if it's a case of a subsequent injury to get information about the way the claim was handled. She strongly encouraged the insurers to use those sources and not to attempt to manipulate this data base into something it was not intended to be.

Vote: **Motion DO PASS ON AMENDMENT #1 CARRIED.**

SENATOR THOMAS said if somebody else wants to move amendment 2, that's fine; however, he would like to move to amendments 3, 4 and 5 because he felt they fit together in dealing with that $10,000. As the bill is written, everybody who missed their payment on their Workers' Compensation or lapsed coverage would be looking at a $10,000 fine or more. Amendments 3, 4 and 5 restore the original language of the law and reverse this situation.

CHAIRMAN KEATING stated they are dealing with section 8. This is the uninsured employer section. He had a tendency to agree with **SEN. THOMAS** because in this section is where some unsuspecting

homeowners have been trapped in the past. They have contracted with somebody to do something around their house or in their barn and as in the case of Carl Hafer from Butte who contracted with an electrician to rewire his barn, the guy fell off the ladder and ended up costing Mr. Hafer $1,205,000 as an uninsured employer. That was one of those technicalities in that he spoke to the guy while he was working him, which all of a sudden established an employer/employee relationship. For the protection of some of those unsuspecting people, **CHAIRMAN KEATING** said he would like to hammer the contractor that goes bare, but doesn't want to catch some poor citizen in a real untenable situation.

SENATOR BENEDICT stated he could not agree more. He added that if SB 67 will allow the Department or the insurers to not accept or deny a claim within 30 days, and not need to have full penalty of that claim, maybe we ought to say it's an inadvertent thing. When the Department of Workers' Comp Division Plan 1's and Plan 2's say occasionally they might not accept or deny a claim within 30 days on an inadvertent basis, they shouldn't get hammered for that. The same thing should happen to a business. They shouldn't get hammered for doing something that was inadvertent.

Motion: **SENATOR THOMAS MOVED DO PASS ON AMENDMENTS #3,#4,#5 OF AMENDMENTS SB034908.AEM.**

Discussion: **SENATOR BENEDICT** said he heard the word discretionary and did not care whether it's discretionary or not, he did not want to put the power in the hands of the Department to levy a $10,000 fine.

SENATOR BARTLETT said that's a perfectly valid point of view but we need to take into consideration the full range of situations that can occur. The example about the gentleman in Butte who thought he was dealing with an independent contractor and found out he wasn't, is a terrific argument for the independent contractor registration issues we have been dealing with. She said she is a little uncomfortable with the level of the potential penalties in the bill as it was written, felt the original penalties are truly insignificant for someone who is purposely going without Workers' Compensation Insurance. Regarding testimony from the State Fund, their minimum premium right now is $210 a year, so if you get a penalty of $200, what kind of an incentive is that for you to take out Workers' Compensation Insurance? She asked if there isn't some middle ground, because the concerns raised are valid ones about the individuals, homeowners and people who through a variety of means truly have an inadvertent lapse in their coverage. That's valid, but there are people out there who are simply refusing to carry Workers' Compensation and take their chances and what we currently have is meaningless.

CHAIRMAN KEATING asked **SEN. BARTLETT** if she recalled that he had the repealer in last session to repeal the uninsured employed by

the plan on the grounds it's a safety net. There are contractors, the unscrupulous, who do this on purpose and rely on these payments. He wanted to get rid of this section altogether and let people be sued, let the employer who goes bare be sued then toward negligence or whatever other actions the claimant would want to take. He was still fearful for the number who are getting nailed under this uninsured employer thing because the language of the law allows the courts to determine that employer/employee relationship. The courts generally lean toward that employer/employee finding, and because of the meaning of the court he did not want to not hit some people who really don't deserve to be hit and can't afford to be hit. Those who go bare take their chances because even under the uninsured plan, they may not necessarily get exclusive remedy if they go there. They can be sued for liability so there is an option by the claimant. He said he is going to vote for this amendment.

SENATOR BENEDICT stated he would also like to clear up something **SENATOR BARTLETT** said. That is the $200.00, and the fact that maybe a minimum premium is $200.00. He thought **SEN. THOMAS** wants to double the amount of premium that should have been paid, and if the premium should have been paid might have been $700 or $800 a year, that could amount to $1400 if they had gone for a couple of years. So it's not that they're just going to a fine of $200, because it's whichever is greater.

SENATOR THOMAS said this does apply to people who actually foul up
their payment too and fall out of coverage because they didn't keep their payment current. It could be a minimum of $200 and $210 but they didn't keep their coverage up so they're hit with a $200 fine. They weren't really trying to go bare, they just goofed up so this deals with everybody, which is difficult.

Vote: **Motion DO PASS ON AMENDMENTS #3,#4,#5 CARRIED UNANIMOUSLY.**

SENATOR THOMAS stated regarding amendment 6 on page 14, line 16, following "approve" it adds "or disapprove". It's meant to say "as it would be per the agreement is subject to Department approval or disapproval."

CHAIRMAN KEATING referred to the following sentence which says, "if the Department fails to approve the agreement in writing in 14 days, it is approved"??? He did not know how that all ties together.

Jacqueline Lenmark stated the proponents of this particular bill have no preference whether you use the term "approve" or "disapprove". The concern is the delay or time lapse at the Department waiting for some action. She stated they wouldn't oppose amendment #6, however, they would oppose amendment #7 which also relates to the same section.

They would prefer the term "working days" not be inserted but we use "days" as the most time limit in law, especially those that apply to legal proceedings, work on a set calendar day schedule and so for clarity and uniformity, we would prefer the days be calendar days, and it doesn't need to be specified. Without the addition of working days, it would mean calendar days.

Ms. Lenmark said they also strongly oppose the last line of amendment #7, with the insertion "of receipt of a properly completed agreement". Again, the problem they are trying to address is quick action on something that is already a matter of agreement, usually by two parties who are both represented by counsel. It shouldn't take an inordinate amount of time to process that agreement and it shouldn't require that kind of scrutiny.

SENATOR BARTLETT stated in the second half of that, she didn't see a difference between the language in the bill now, which the amendment proposes to strike, and the replacement language.

Ms. Lenmark stated to clarify the last two lines of #7, the problem they see is quibbling over whether an agreement is properly completed. The agreement is entered into by the claimant and typically represented by counsel, although not necessarily, and the insurer. If it is an agreement between the parties, that should be satisfactory, except in extraordinary circumstances. They want to avoid the haggling over whether an agreement is properly completed.

SENATOR BARTLETT stated if we simply use the words "of receipt of a completed agreement by the department", it seems it's possible that for whatever reason the whole agreement didn't get put in the mail and received by the Department or something, there is a point to be made about making sure that they have the complete agreement to look at and do a review on.

Jacqueline Lenmark said they wouldn't oppose that sort of an amendment.

SENATOR BENEDICT asked **SENATOR THOMAS** if amendment #6 and amendment #7 were Department of Labor amendments?

SENATOR THOMAS answered they were.

Motion/Vote: **SEN. FRED THOMAS MOVED DO PASS ON AMENDMENT #6. Motion CARRIED UNANIMOUSLY.**

Motion: **SEN. SUE BARTLETT MOVED DO PASS ON AMENDMENT #2.**

Discussion: **SENATOR BARTLETT** stated amendment #2 is the issue over whether a report is issued annually or biennially. She recalled from the testimony an annual report is also one **REP. HIBBARD** sponsored; however, the whole purpose of that data base was to put together information on the full range of Workers'

Compensation, i.e. identify things like the cost of drivers in the system to be used predominantly by policymakers, and potentially by insurers and to compare themselves to the other plans to see if their performance needed to be improved. The Department has indicated there is no fiscal impact on doing a report annually, that was the intent of the original legislation, and **SEN. BARTLETT** thinks it's worth remaining faithful to that original intent. There hasn't been anything in the meantime to suggest a change.

CHAIRMAN KEATING addressed the amendments. In speaking as sponsor of the bill, he would respectfully resist the amendment. The consensus group that put the bill together, made the draft on a study basis and their biennial report is sufficient for everybody's purposes. He realized this came from the Department for whatever reason, but doesn't want to change the bill at this time.

SENATOR BARTLETT pointed out there were no legislators on that working group and legislators were to be one of the predominant beneficiaries of the data base and the reporting.

Vote: **Motion DO PASS ON AMENDMENT #2 FAILED 4-5.**

SENATOR BENEDICT he had one more amendment. It's a perceptual amendment, Page 7, striking lines 11 through 15. He had hoped **SENATOR EMERSON'S** amendment had addressed this, but this language is very inconsistent with the other independent contractor bills that are moving through the legislature. The fact they still call for the $25 application fee, whereas this language allows the Department to set an amount sufficient to fully fund the cost of administering the program, which is like giving the Department a blank check. He suggested they strike 11 through 15, which would just allow current law to stay in place. We'll handle that in these other bills which are moving through on the independent contractors. Striking Subsection (b) allows it to remain the way it is in current law.

Jacqueline Lenmark suggested as an alternative, is a coordination section. You have a concern about writing a blank check to the Department. The problem is the insurers pay that blank check; the Department does not. Without some sort of limitation there, we are placing a burden upon our policyholders to fund other people who want to opt out of the system. That's not a fair thing to do to the employers who choose correctly to insure their employees. The problem is it's our policyholders who pay that blank check, and that's why we've suggested the fee be set so that exemption program be self-funding.

SENATOR BENEDICT asked **Ms. Lenmark** if she could you correct yourself? What her organization pays is in excess of the $25.00, not the whole program. If they take in $25.00 and it costs them $35.00 to administer it, then they pay the extra $10.00.

Jacqueline Lenmark said she spoke too broadly.

Motion/Vote: **SEN. STEVE BENEDICT MOVED DO PASS TO RESTORE SUBSECTION (B) TO ITS ORIGINAL LANGUAGE. Motion CARRIED 6-3.**

Vote: **Motion DO PASS ON SB 349 AS AMENDED CARRIED UNANIMOUSLY.**

{Tape: 2; Side: B; Approx. Time Count: 6:08 p.m.; Comments: N/A.}

EXECUTIVE ACTION ON SB 350

Amendments: See **(EXHIBIT 15).**

Discussion: **CHAIRMAN KEATING** said he had been approached from several angles. The bill has the right idea for re-arranging things. It may seem somewhat strict as to the Commission and it may not seem strict enough to some of the proponents, but he didn't know that this Committee had the time to rearrange this bill to suit everybody; however, there are a couple of things that might be done to make the bill less heavy-handed with regards to restrictions on actions of the Commission, but at the same time carry through the theme of helping the people who are involved in those Civil Rights complaints.

The one area which was recommended for amendment dealt with the rules of civil procedure as being too stringent, too complicated, too heavy for the work of the Commission in regards to mediating, investigating or working toward the settlement of the claims. It's been suggested we operate the contested case hearing under the Montana Human Rights Act as opposed to the Rules of Civil Procedure. If the committee were to agree, we could amend Section 9 of the bill to remove the Rules of Civil Procedure.

SEN. SUE BARTLETT said she heard such a variety of things from interested parties and was wondering about taking a moment to ask the three or four major interested parties to tell what they would like to see happen with this bill at this point.

CHAIRMAN KEATING said he would like to preface that request with his remarks from the principals involved. They have agreed the whole bill is very complicated and they do want to make changes. They are all interested in working towards a better bill for all sides. Also, if they want us to keep the bill alive, we can pass it in some form and then they can work on their amendments. When the hearing is in the House, they can mesh their ideas and "duke" it out over there.

David Owen, Montana Chamber of Commerce said they had a productive and good-faith meeting yesterday afternoon with the principals involved in this bill. They decided they needed more time to work on the language, get through the technical part and sort out the questions. Given the time constraints of the transmittal, it seems it would be best to make some immediate

changes, to pass it on over to the House and make a commitment to continue the process we had agreed to yesterday.

{Tape: 3; Side: A; Approx. Time Count: 6:16 p.m.; Comments: N/A.}

Ann McIntyre said she felt this is a complex bill from a procedural and remedial standpoint and it is very difficult to craft amendments to address the concerns of the proponents of the legislation and still come out with something which will work for the citizens. That has to be the real goal. She attempted to develop some amendments which were distributed at the hearing and found the bill essentially was so technically flawed, in my view, it was hard to put the amendments into that framework. They are committed to coming up with something that makes more sense.

CHAIRMAN KEATING asked if she felt somewhat assured the other people will work with you in all of this so if we do send it out, there will be collaboration?

Ann McIntyre answered, "yes".

Pat Haffey, Department of Labor said she thought they had identified the problem and where we're going to find the "fix". She would like the attorneys to take a look because of hearing about all the legal issues. She is committed to working with the group to make sure the bill is clean from a legalistic standpoint; however, from an administrative standpoint, she said she understands the message and is committed to being an active participant.

John Shontz, Montana Association of Realtors said he would like to echo what has been said regarding yesterday's meeting. There is one thought he said he wanted to share. That was if you are interested in the amendment, you might want to visit Section 4. Also, they set out a very ambitious work schedule for themselves which we all intend to keep.

Christine Kaufman, Human Rights Network asked that someone be there who represented the citizens of the state who face discrimination. She would be willing to do that.

Tom Hopgood, Lee Enterprises, Inc. said he didn't testify on this bill but did submit written comments. He said they have an abiding interest in one section of the bill and would like to enter into discussions with interested parties on this bill.

Dean Randash stated he would be in favor of what has been agreed to and would requested that he be included with those discussions.

SEN. DEBBIE SHEA said she would like to make a comment because she signed onto this bill. She thought they all need to do a lot of work with this Commission; however, wished this had started in the House and come over to be rectified.

Motion: **SEN. STEVE BENEDICT MOVED DO PASS SB 350.**

Discussion: **SEN. SUE BARTLETT** said she appreciated the good faith work by all parties and thinks it's pretty clear to everyone the form this bill is in will keep her from voting in favor of it.

Vote: **MOTION TO PASS SB 350 PASSED 6-3.**

{Tape: 3; Side: A; Approx. Time Count: 6:25 p.m.; Comments: N/A.}

EXECUTIVE ACTION ON SB 375

Motion: **SEN. FRED THOMAS MOVED DO PASS ON SB 375.**

Motion: **SEN. FRED THOMAS MOVED DO PASS ON AMENDMENTS SB037501.AEM (EXHIBIT 17).**

Discussion: **Jacqueline Lenmark, American Insurance Association** explained the amendments are technical and are consensus amendments. Amendment #1 amends the title; #2 makes the definition of paid losses in this bill track precisely with the paid losses in the Administrative Assessment Bill; #3 is clerical to make the use of the term consistent; #4 is to impose a limit on the total amount that would be retained in this subsequent injury fund, which is to act as reimbursement to insurers; #5 is to make it clear in law what is happening for insurers is they are being reimbursed for payment; #6 takes out a subsection nearly everyone thought was incomprehensible and confusing; #7 changes a reporting date so it matches precisely with a reporting date contained in the Administrative Assessment Bill; #8 is the same explanation; #9 is grammatical; #10 corrects a typographical error; #11 deletes the emergency assessment again; #12 tracks with the amendment; #13 makes the dates consistent with the other bill; #14 makes the policy surcharge permissive rather than mandatory; #15 deletes a reference to the emergency assessment; #16 & #17 removes the debatable procedural portions of the bill; the law will remain as it is now and there will be no amendment; #18 deletes the first three subsections of new Section 9. This section will not be codified; it is simply an instruction so the funds that are currently held in the Subsequent Injury Fund will be transferred to the Administrative Assessment Fund; #19 is the substantive language making that transfer; #20 concludes that transfer; #21 & #22 correct the codification and effective date sections for the renumbering that happened as a result of the deleted sections.

She wanted the committee to be very clear this sort of fund cannot create an unfunded liability. The insurers have to pay at the front of the process and then seek reimbursement from this fund; therefore, there will never be an unfunded liability in that sense. If an insurer did not pay benefits on a worker who was reimbursed, our respective guaranty funds would come into play and full benefits would be paid to the worker.

Vote: **MOTION DO PASS ON AMENDMENTS SB037501.AEM CARRIED UNANIMOUSLY.**

Vote: **MOTION DO PASS ON SB 375 AS AMENDED CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 364

Motion: **SEN. SUE BARTLETT MOVED DO PASS ON SB 364.**

Motion/Vote: **SEN. SUE BARTLETT MOVED DO PASS ON AMENDMENTS SB036401.AEM (EXHIBIT 16). Motion CARRIED UNANIMOUSLY.**

Discussion: **SEN. STEVE BENEDICT** stated he would later offer a TABLE motion because it creates more problems than it solves in terms of its impact on small businesses around the state.

SEN. CASEY EMERSON said the idea isn't bad but the opposite side of it will cut back on jobs because regulations are being added, i.e. what you gain on one end you lose on the other.

SEN. SUE BARTLETT said she didn't think that it adds all that many regulations. There's validity in looking at the language and trying to make it work and I would like the opportunity to do that. She appreciated the committee's courtesy in allowing the proponents to testify in the hearing and I think the concept of the bill deserves the chance to stay alive and be worked on between here and the House Committee.

SEN. FRED THOMAS said he would vote against the bill. Europe has done a lot of this sort of thing and he would not want to be in Europe. They have a lot of benefits and built-in pay but a lot of unemployment and lack of opportunity. This one thing may send us down a track, which is not beneficial to Montanans.

SEN. DEBBIE SHEA stated she would like to speak on behalf of the bill because she thinks it is a very progressive and exciting piece of legislation. She thinks it would be a shame to interrupt and stop the wealth of ideas which could be added and thereby satisfy some of the concerns.

SEN. BILL WILSON asked if it would make any sense to ratchet up the $25,000 limit so it would be more palatable to someone who was getting a huge amount of government assistance, rather than a small outfit?

SEN. BARTLETT she would certainly consider that, but would want a little time to think it over and talk to some people about the effects of that and what we might be able to screen out.

CHAIRMAN KEATING stated his uneasiness with this proposal was that the law of unintended consequences might be triggered. There are small fledgling outfits who are trying to get going, and the pay is going to have to be an agreement between the employer and employee. If the business goes, the employee should

be rewarded, and usually is. His uneasiness is there is not enough definition at this time, and he is not willing to let it become law.

Substitute Motion: **SEN. STEVE BENEDICT MOVED TO TABLE SB 364. Motion CARRIED 5-3, with SEN. JIM BURNETT excused.**

ADJOURNMENT

Adjournment: The meeting adjourned at 6:42 p.m.

SEN. THOMAS F. KEATING, Chairman

GILDA CLANCY, Secretary

TF/GC

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 24, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: Rep. Wes Prouse (R)

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 349; SB 375; SB 331; SB 375 (3/18/97)
Executive Action: SB 349; SB 375; SB 118; SB 234; SB 259; HB 598

HEARING ON SB 349

Opening Statement by Sponsor: **Senator Keating,** S. D. 5, introduced the bill. **EXHIBIT 1.**
{Tape: 1; Side: 1; Approx. Time Count: .01; Comments: None.}

Proponents Testimony:
Jacqueline Lenmark, American Insurance Assn.
{Tape: 1; Side: 1; Approx. Time Count: 4.9; Comments: None.}

George Wood, Ex. Dir. Mt. Self Insurers Assn.
{Tape: 1; Side: 1; Approx. Time Count: 15.7; Comments: None.}

Bob Worthington, MMIA
{Tape: 1; Side: 1; Approx. Time Count: 16.2; Comments: None.}

Ray Barnicoat, Montana Assn. of Counties
{Tape: 1; Side: 1; Approx. Time Count: 16.8; Comments: None.}

Howard Bailey, MT. School Groups
{Tape: 1; Side: 1; Approx. Time Count: 17.0; Comments: None.}

Mark Berry, State Fund
{Tape: 1; Side: 1; Approx. Time Count: 17.5; Comments: None.}

Chuck Hunter, MT Department of Labor
{Tape: 1; Side: 1; Approx. Time Count: 17.8; Comments: None.}

Opponents Testimony: None.

Questions From Committee Members and Responses:
{Tape: 1; Side: 1; Approx. Time Count: 21.5; Comments: None.}

Closing by Sponsor: **Senator Keating** closed. **Rep. Simon** to carry.
{Tape: 1; Side: 1; Approx. Time Count: 26.5; Comments: None.}

HEARING ON SB 290

Opening Statement by Sponsor: **Senator Keating,** S. D. 5, introduced the bill.
{Tape: 1; Side: 1; Approx. Time Count: 28.4; Comments: None.}

Proponents' Testimony:
George Wood, MT Self Insurers, Ex. Secretary
{Tape: 1; Side: 2; Approx. Time Count: 1.9; Comments: None.}

Bob Worthington, MMIA
{Tape: 1; Side: 2; Approx. Time Count: 5.4; Comments: None.}

Ray Barnicoat, MT Association of Counties
{Tape: 1; Side: 2; Approx. Time Count: 6.2; Comments: None.}

Howard Bailey, MT Schools Group
{Tape: 1; Side: 2; Approx. Time Count: 6.6; Comments: None.}

Jacqueline Lenmark, American Insurance Assn.
{Tape: 1; Side: 2; Approx. Time Count: 6.9; Comments: None.}

Jim Brown, Building Codes Division, Dept. of Commerce
{Tape: 1; Side: 2; Approx. Time Count: 8.5; Comments: None.}

Mark Berry, State Fund
{Tape: 1; Side: 2; Approx. Time Count: 8.9; Comments: None.}

Chuck Hunter, MT Dept. of Labor
{Tape: 1; Side: 2; Approx. Time Count: 9.3; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:
{Tape: 1; Side: 2; Approx. Time Count: 11.1; Comments: None.}

Closing by Sponsor: **Senator Keating** closed. **Rep. Simon** to carry.
{Tape: 1; Side: 2; Approx. Time Count: 26.4; Comments: None.}

HEARING ON SB 331

Opening Statement by Sponsor: **Senator Fred Thomas**, S. D. 31 introduced SB 331.
{Tape: 1; Side: 2; Approx. Time Count: 27.0; Comments: None.}

Proponents' Testimony:
Dave Richart,Vice Pres. of St. Peter's Hospital
{Tape: 2; Side: 1; Approx. Time Count: 6.7; Comments: None.}

Bob Olsen, MT Hospital Assn. EXHIBIT 2.
{Tape: 2; Side: 1; Approx. Time Count: 9.2; Comments: None.}

Nancy Butler, State Fund
{Tape: 2; Side: 1; Approx. Time Count: 15.7; Comments: None.}

George Wood, Ex. Secretary Mt. Self Insurers Assn.
{Tape: 2; Side: 1; Approx. Time Count: 17.0; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:
{Tape: 2; Side: 1; Approx. Time Count: 17.8; Comments: None.}

Closing by Sponsor:**Senator Thomas** closed. **Rep. Paul Sliter** to carry.
{Tape: 2; Side: 2; Approx. Time Count: 12.1; Comments: None.}

HEARING ON SB 375

Opening Statement by Sponsor: **Senator Fred Thomas,** S. D. 31 introduced the bill.
{Tape: 2; Side: 2; Approx. Time Count: 13.9; Comments: None.}

Proponents' Testimony:
Jacqueline Lenmark, American Insurance Assn.
{Tape: 2; Side: 2; Approx. Time Count: 19.5; Comments: None.}

George Wood, Ex. Secretary, Mt Self Insurers. EXHIBIT 3.
{Tape: 2; Side: 2; Approx. Time Count: 27.6; Comments: None.}

Bob Worthington, MMIA
{Tape: 3; Side: 1; Approx. Time Count: 7.8; Comments: None.}

Ray Barnicoat, MACO
{Tape: 3; Side: 1; Approx. Time Count: 8.8; Comments: None.}

Aidan Myhre, MT Rehabilitation Assn.
{Tape: 3; Side: 1; Approx. Time Count: 9.1; Comments: None.}

Jerry Driscoll, MT Industrial Trades
{Tape: 3; Side: 1; Approx. Time Count: 9.6; Comments: None.}

Mark Berry, Mt. State Fund
{Tape: 3; Side: 1; Approx. Time Count: 10.7; Comments: None.}

Chuck Hunter, Dept. of Labor
{Tape: 3; Side: 1; Approx. Time Count: 11.8; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:
{Tape: 3; Side: 1; Approx. Time Count: 13.0; Comments: None.}

Closing by Sponsor: **Senator Thomas** closed. **Rep. Cocchiarella** to carry.
{Tape: 3; Side: 1; Approx. Time Count: 15.2; Comments: None.}

EXECUTIVE ACTION ON SB 290

Motion: **Rep. Simon** moved do concur SB 290. **Rep. Simon** withdrew his motion.
{Tape: 3; Side: 1; Approx. Time Count: 16.5; Comments: None.}

EXECUTIVE ACTION ON SB 349

Motion: **Rep. Devaney** moved do concur SB 349.
{Tape: 3; Side: 1; Approx. Time Count: 19.7; Comments: None.}

Motion/Vote:**Rep.Simon** moved to adopt Keating amendments segregating out no. 6. Motion passed unanimously.
{Tape: 3; Side: 1; Approx. Time Count: 20.0; Comments: None.}

Motion/Vote: **Rep. Krenzler** moved Krenzler amendments. Motion carried unanimously.
{Tape: 3; Side: 1; Approx. Time Count: 2.8; Comments: None.}

MOTION/VOTE; Rep. Devaney moved do concur SB 349 as amended. Motion carried unanimously. **Rep. Simon** to carry.
{Tape: 3; Side: 1; Approx. Time Count: 23.1; Comments: None.}

EXECUTIVE ACTION ON SB 331

Motion: **Rep. Sliter** moved do concur SB 331.
{Tape: 3; Side: 1; Approx. Time Count: 23.8; Comments: None.}

Motion: **Rep.Sliter** withdrew motion because amendments are not ready.
{Tape: 3; Side: 1; Approx. Time Count: 28.9; Comments: None.}

EXECUTIVE ACTION ON SB 375

Motion: **Rep. Sliter** moved do concur SB 375.
{Tape: 3; Side: 1; Approx. Time Count: 28.9; Comments: None.}

Motion/Vote: **Rep. Sliter** moved to adopt Thomas amendments. Motion carried unanimously.
{Tape: 3; Side: 1; Approx. Time Count: 29.1; Comments: None.}

Motion/Vote: **Rep. Sliter** moved do concur SB 375 as amended. Motion carried unanimously. **Rep. Cocchiarella** to carry.
{Tape: 3; Side: 1; Approx. Time Count: 29.5; Comments: None.}

EXECUTIVE ACTION ON SB 118

Motion: **Rep. Devaney** moved do concur SB 118.
{Tape: 3; Side: 2; Approx. Time Count: 1.2; Comments: None.}

Motion/Vote: **Rep. Masolo** moved to strike page 2 lines 29 and 30. Motion carried unanimously.
{Tape: 3; Side: 2; Approx. Time Count: 2.8; Comments: None.}

Motion/Vote: **Rep. Devaney** moved do concur as amended. Motion carried 18-1. **Rep. Prouse** voted no. **Rep. Devaney** to carry.
{Tape: 3; Side: 2; Approx. Time Count: 3.1; Comments: None.}

EXECUTIVE ACTION ON SB 234

Motion: **Rep. Bookout** moved do concur SB 234.
{Tape: 3; Side: 2; Approx. Time Count: 4.4; Comments: None.}

Motion/Vote: **Rep. Bitney** moved to adopt Bitney amendments. Motion failed 4-15.
{Tape: 3; Side: 2; Approx. Time Count: 5.0; Comments: None.}

MOTION/VOTE; **Rep. Sliter** moved to adopt NAII amendments. **Rep. Bookout** moves to segregate 1 and 2. Vote on amendments No. 1 carries 18-1. **Rep. Sliter** voted no. Vote on amendment no 2. carried unanimously.
{Tape: 3; Side: 2; Approx. Time Count: 16.6; Comments: None.}

Motion/Vote:**Rep. Sliter** moved do concur SB 234 as amended. Motion carried 17-2. **Reps. Barnett and Trexler** voted no.
{Tape: 3; Side: 2; Approx. Time Count: 17.0; Comments: None.}

EXECUTIVE ACTION ON HB 598

Motion: **Rep. Trexler** moved do pass HB 598.
{Tape: 3; Side: 2; Approx. Time Count: 18.6; Comments: None.}

Motion/Vote: **Rep. Trexler** moved to adopt Trexler amendments. Motion carried unanimously.
{Tape: 3; Side: 2; Approx. Time Count: 19.6; Comments: None.}

Motion/Vote: **Rep. Devaney** moved do pass HB 598 as amended. Motion carried unanimously.
{Tape: 3; Side: 2; Approx. Time Count: 20.7; Comments: None.}

EXECUTIVE ACTION ON SB 259

Motion: **Rep. Tuss** moved do concur SB 259.
{Tape: 3; Side: 2; Approx. Time Count: 21.4; Comments: None.}

Discussion:
{Tape: 3; Side: 2; Approx. Time Count: 22.1; Comments: None.}

Vote: Roll call vote - motion carried 18-1 roll call vote. **Rep. Simon** voted no.

ADJOURNMENT

Adjournment: 12:12 AM

REP. BRUCE T. SIMON, Chairman

PATI O'REILLY, Secretary

BTS/PO

EXHIBIT 3
DATE 3/24/97
SB 375

Amendments to Senate Bill No. 375
Third Reading Copy

Requested by Senator Thomas
For the House Committee on Business and Labor

Prepared by Eddye McClure
March 19, 1997

1. Page 1, line 22 through page 2, line 1.
Following: "fund"
Strike: remainder of line 22 through "collected" on page 2, line 1
Following: "."
Insert: "The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 insured employees, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund"
Renumber: subsequent subsections

2. Page 3, line 1.
Strike: "in"
Insert: "on"

3. Page 3, lines 17 through 19
Following: "."
Strike: remainder of line 17 through "fund." on line 19

4. Page 8, line 10.
Following: "to"
Strike: "insurers"
Insert: "offset the insurer's assessment for the administration fund"

5. Page 8, lines 11 through 22
Strike: line 11 through "39-71-201" on line 22
Insert: "(1) plan No. 1, $490,000;
(2) plan No. 2, $612,500; and
(3) plan No. 3, $2,397,500"

Strike: ","
Insert: "and"
Strike: "BE"
Insert: "disclose"

6. Page 4, lines 6 and 7.
Following: "FOR"
Strike: remainder of line 6 through "PROCESSING" on line 7
Insert: "determining claim liability or for fraud investigation; and
(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution"

7. Page 4, line 28.
Following: "~~an annual~~"
Strike: "a biennial"
Insert: "an annual"

8. Page 5, lines 1 through 7.
Strike: section 4 in its entirety
Renumber: subsequent sections

9. Page 7, line 20.
Strike: "NO"
Insert: "a $25"

10. Page 7, line 21.
Following: "APPLICATION"
Insert: "renewal"

11. Page 11.
Following: line 12
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

12. Page 15, line 24.
Following: "inadequate"
Strike: "."
Insert: ";"

13. Page 16, line 9.
Following: "injury"
Insert: "; or
(d) except as otherwise provided in this chapter, all other compromise settlements and lump sum payments agreed to by a claimant and insurer"

-END-

HOUSE STANDING COMMITTEE REPORT

March 24, 1997

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 375** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Bruce Simon, Chair

And, that such amendments read: **Carried by: Rep. Cocchiarella**

1. Page 1, line 22 through page 2, line 1.
Following: "fund"
Strike: remainder of line 22 through "collected" on page 2, line 1
Following: "."
Insert: "The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 insured employees, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund"
Renumber: subsequent subsections

2. Page 3, line 1.
Strike: "in"
Insert: "on"

3. Page 3, lines 17 through 19
Following: "."
Strike: remainder of line 17 through "fund." on line 19

3-24-97

Committee Vote:
Yes 19, No 0.

641510SC.Hgd

4. Page 8, line 10.
Following: "to"
Strike: "insurers"
Insert: "offset the insurer's assessment for the administration fund"

5. Page 8, lines 11 through 22
Strike: line 11 through "39-71-201" on line 22
Insert: "(1) plan No. 1, $490,000;
(2) plan No. 2, $612,500; and
(3) plan No. 3, $2,397,500"

-END-

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/24/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse		—	X
Carolyn Squires	X		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	—		

REPORT TO AMENDMENT COORDINATOR

Committee ~~House Bus~~ Date 3/24/97

The Following Committee Action Occurred this Date:

DO PASS or BE CONCURRED IN

	Bill or Resolution *Note Reading Copy*	WordPerfect File Name *Attach Paper Copy*	Representative To Carry *If Senate Bill*	Consent Calendar
1.	SB ~~290~~ 349 as amended	Jensen to carry	19-0	☐
2.	~~HB 531~~ -	~~State to carry~~		☐
3.	SB 375 - as amended	Weeks to carry	~~15-4~~ 17-2	☐
4.	SB 118 - as amended	Weeks -	18-1	☐
5.	SB 234 - as amended	Burtenshaw -	17-2	☐
6.	HB 598 as amended	~~Burtenshaw~~	- 19-0	☐
7.	SB 259	Wyatt to carry	~~17-1~~ 17-2	☐
8.				☐
9.				☐

DO *NOT* PASS or *BE NOT* CONCURRED IN

	Bill or Resolution *Note Reading Copy*	WordPerfect File Name *Attach Paper Copy*	Representative To Carry *If Senate Bill*
1.			
2.			
3.			
4.			
5.			
6.			

Signed: _____ Phone _____ Page _____ of _____
Committee Secretary

Copy Received _____ Date/Time _____
Amendment Coordinator

AMD-REPT.FRM 1/91 HEIMAN

CHAPTER NO. 284

[SB 375]

AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, AND 39-71-907, MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES:

Be it enacted by the Legislature of the State of Montana:

Section 1. Assessment of insurers — definition. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 insured employer, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the

percentage that the total paid losses of the individual plan No. 2 insured employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

(7) Each plan No. 2 insurer providing workers' compensation insurance may collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(8) All assessments paid to the department must be deposited in the fund.

Section 2. Section 33-16-1008, MCA, is amended to read:

"33-16-1008. Definitions. As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic

variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based *and excluding any separately stated policyholder surcharges*, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner."

Section 3. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund — option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

~~(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

~~(4)~~*(3)* The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)."

Section 4. Section 39-71-903, MCA, is amended to read:

"**39-71-903. Procedure and practice.** When a vocationally handicapped person receives ~~a personal~~ *an* injury, *as defined in 39-71-119,* the procedure ~~and practice~~ provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided ~~herein~~."

Section 5. Section 39-71-907, MCA, is amended to read:

"**39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — insurer liability for compensation limited — appropriation.** (1) A person certified as vocationally handicapped who receives ~~a personal~~ *an* injury ~~arising out of and in the course of employment and resulting~~, *as defined in 39-71-119, that results* in

death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ *the* injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 6. Transfer and credit of excess funds held in subsequent injury fund. On or before September 1, 1997, the department of labor and industry shall transfer $3.5 million of the funds retained in the fund to the fund in 39-71-201 and credit the amount to offset the insurer's assessment for the administration fund as follows:

(1) plan No. 1, $490,000;

(2) plan No. 2, $612,500; and

(3) plan No. 3, $2,397,500.

Section 7. Repealer. Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are repealed.

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 1].

Section 9. Effective dates. (1) [Sections 1 through 5 and 7] are effective January 1, 1998.

(2) [Sections 6 and 8 and this section] are effective on passage and approval.

Approved April 16, 1997

CHAPTER NO. 285

[SB 383]

AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL STREET GANG-RELATED OFFENSES; AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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